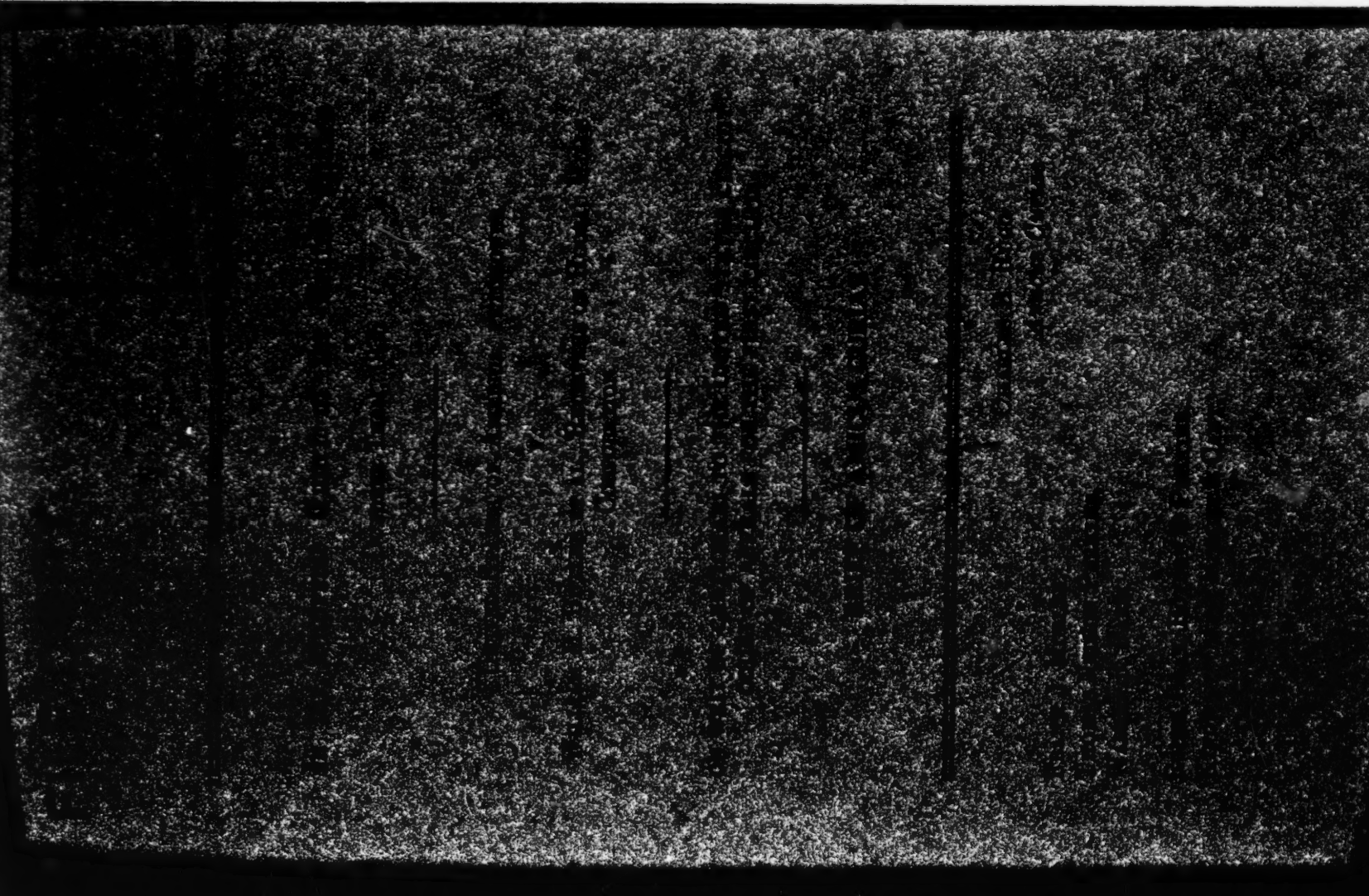

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 401.

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM M. BUTLER ET AL., RECEIVERS OF HOOSAC MILLS CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The undersigned respectfully petitions this Honorable Court for leave to file a brief as *amicus curiae* in the above-entitled suit. The Solicitor General and counsel for the respondents have assented in writing, as indicated by letters filed with the Clerk of this Court.

Your petitioner applies as counsel for the General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. Each of these concerns, directly or through its subsidiaries, is engaged in the processing of wheat. Each has paid substantial amounts to the Government as processing taxes. Several suits in equity in various

federal courts, seeking to enjoin the collection of these taxes on the ground of the unconstitutionality of the Agricultural Adjustment Act, have been brought by these mills.

They are all genuinely interested in the decision of the questions concerning the constitutionality of the Act as presented in this suit.

Respectfully submitted,

CHARLES B. RUGG

December 9, 1935.

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BRIEF OF AMICUS CURIAE

PRELIMINARY STATEMENT

This brief is filed by counsel for General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. as *amicus curiae*. It is our purpose to show that the processing taxes assessed pursuant to the Agricultural Adjustment Act are not within the constitutional authority of Congress.

We conceive the determination by this Court in the instant case of the validity of the processing and flour stocks taxes on cotton under the Agricultural Adjustment Act will be decisive of the validity of the similar taxes on wheat.

We do not consider all the issues raised by the assignment of errors in the case. The arguments in this brief are confined to what appear to us to be a few of the more significant points. We have attempted to avoid the repetition of any arguments set forth in the briefs filed by counsel for the respondents or by any other *amici curiae* so far as we have had opportunity to examine them.

In the appendix to this brief we are printing some official documents illustrative of the administration of the wheat program. In the interest of brevity we are not printing the applicable statutes as they are set forth fully in the appendix to the brief for the United States, pp. 1-26. We are filing with the clerk ten bound copies of various other documents issued under authority of the Department of Agriculture respecting the Act in relation to wheat.

SUMMARY OF ARGUMENT

I. The Agricultural Adjustment Act is an effort by the Federal Government to restore agricultural purchasing power to the level prevailing some twenty or more years ago. To that end it attempts to adjust the amount of production of the major agricultural commodities and to insure the receipt by the producers of such commodities of a so-called "parity" price. A study of the application of the Act to a typical agricultural commodity, wheat, shows the manner in which these objectives are attained. Under the wheat adjustment program each producer who is willing to contract to subject his land to the requirements and regulations of the Secretary of Agriculture with respect to production receives a benefit payment on 54.4 per cent of his average production for the past three years. That payment is intended to equalize the difference between the present

market price of wheat and its price, in terms of purchasing power, before the war. The payment serves to increase the income of cooperating farmers directly. But, as the Agricultural Adjustment Administration has pointed out, its primary purpose is to insure that those who would otherwise be tempted not to cooperate will participate in the scheme to reduce production. The processing tax serves to finance this payment. The inauguration, termination and rate of the tax are all calculated with respect to the making of such payments. The tax clearly appears to have as its only purpose the accomplishment of the scheme for adjustment of agricultural production and the fixing of prices for agricultural commodities.

II. In determining whether the processing tax is really a revenue measure, as the petitioner asserts, this Court must scrutinize all the provisions of the Act. To contend otherwise is in effect to say that Congress by calling an act a taxing act can make it so. On the theory that only the sections laying the tax may be looked at, the Child Labor Tax, considered in *Child Labor Tax Case*, 259 U. S. 20, and the Future Trading Act, considered in *Hill* v. *Wallace*, 259 U. S. 44, must necessarily have been held true taxing measures. The indicia of a revenue measure, which the petitioner asserts are borne by the present act, have all been present in other measures which this Court has held not to be tax measures at all. The petitioner's whole argument on this point goes to prove simply that the Act was designed to raise money and required money to effectuate its scheme. But none of the money raised goes to swell the income of the government. It is all devoted in advance to carrying out the scheme for economic reform contemplated by the Act. Measures, the sole purpose of which is to achieve

some such ulterior end, and which do not aim primarily at increasing the income of the government, have consistently been held not to be exercise of the power to lay taxes or raise revenue. They can be sustained as regulations if the government has the power to attain that end by direct legislation, but not otherwise. The Federal Government could not directly fix the prices of agricultural commodities or regulate agricultural production. That is exclusively within the power of the States. It cannot, therefore, achieve the same end through this device. The taxing power, like all the other federal powers, cannot be used for the sole object of accomplishing purposes not entrusted to the Federal Government. The petitioner's suggestion that, so long as coercion is not used, Congress is unfettered in the choice of the functions it may perform runs squarely counter to considered pronouncements of this Court from the time of Chief Justice Marshall to the present day. The test is not whether the purposes or ends which it is sought to accomplish are achieved by coercion, but whether, however achieved, they are the kind of purposes or ends which have been entrusted to the Federal Government.

III. An immediate object of the processing tax is to compel the processor to make up the difference between market and parity prices in order that the purchasing power of the farmer may be increased without the delay incident to the operation of the production control program. In this aspect the tax is clearly a price fixing device. In the case of wheat, since the difference between market and parity price was found at the inception of the program to be thirty cents per bushel, a processing tax at that rate was put into effect and cooperating farmers were paid thirty cents per bushel on their

domestic allotments, less a small deduction for administrative expenses. Thus the taxing machinery of the Government is used as a mere conduit through which the additional payment necessary to make up a predetermined price passes from one party to the other. Clearly this is a police measure and not within the constitutional powers of the Federal Government. It is price regulation coupled with confiscation. It is not in aid of or incidental to the laying of a tax, but is the express purpose of the levy. ' It cannot be sustained as an exercise of the taxing power.

IV. The processing tax is not in truth a tax because its immediate purpose is a private one, and the public purpose is secondary and remote. This question may be raised by the processor, notwithstanding the decision in *Massachusetts* v. *Mellon,* 262 U. S. 447, because his interest is substantial and the purposes for which his money is to be taken are expressed in the statute imposing the levy. *Loan Association* v. *Topeka,* 20 Wall. 655, and other decisions of this Court establish the principle that money cannot be raised under the taxing power for primarily private purposes, even though the public will be indirectly benefited. The processing tax is used to increase the financial resources of the farmer. The proceeds are expended in aid of private enterprises, and although improvement of the economic condition of the farmer may ultimately benefit the general public, the anticipated benefit to the public is too speculative and indirect to justify the raising of money by taxation. The rule of the *Loan Association* case, *supra,* applies to state and federal taxation alike. The "general welfare" clause does not enlarge the power to lay taxes, but merely requires that it be used for the benefit of the nation as a whole. It has no bearing on the distinction between pub-

lic and private purposes, and does not empower the Federal Government to lay taxes for purposes which will benefit the public in only a secondary manner.

ARGUMENT

I.

AN ANALYSIS OF THE ACT AND OF ITS ADMINISTRATION WITH RESPECT TO WHEAT, A TYPICAL AGRICULTURAL COMMODITY

A. The General Purposes and Mechanics of the Act Itself

The ultimate purposes of the Agricultural Adjustment Act need not be speculated or conjectured. They are expressly and frankly avowed by Congress. The primary purpose stated in the title of the Act is "to relieve the existing national economic emergency by increasing agricultural purchasing power". The economic emergency, which, it is declared in Section 1 of the Act, renders imperative the immediate enactment of Title I of the Act, is said to be in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities. The policy of Congress, set out in Section 2 of the Act, is to correct that disparity by establishing and maintaining such balance between the production and consumption of agricultural commodities and such marketing conditions therefor as will reestablish prices to farmers, in terms of purchasing power, at the level existing between August, 1909 and July, 1914. As is said in U. S. Dept. of Agriculture, *Agricultural Adjustment in 1934*, p. 2:

> "The act was directed mainly toward correcting those economic conditions in agriculture which had impoverished the farmers and were impeding national recovery. It recognized a disparity between farm prices and prices of nonagricultural products. . . . The act established a specific measure of ex-

change value for farm products, as an equitable goal for farm prices and an objective for price-improvement efforts.".

This underlying objective of the Act, to raise the purchasing power of farmers to the point it had reached some twenty years ago, is to be achieved by balancing production and consumption and regulating marketing conditions. These intermediate objectives are to be reached primarily through exercise of the powers conferred on the Secretary by Section 8 of the Act.

The powers there given are broadly sketched rather than sharply defined. Detailed directions as to the manner of their exercise are lacking. But they are conferred and to be exercised only "in order to effectuate the declared policy". To that end the Secretary is empowered, by subsection 1 of Section 8, to provide for reduction in acreage or in production for market of the basic agricultural commodities, designated in Section 11 of the Act, through agreements or other voluntary methods, and to provide for rental or benefit payments. For the same purpose, he is authorized, by subsection 2 of Section 8, to enter into marketing agreements with processors, producers and others, and, by subsection 3, to issue licenses, permitting processors, associations of producers and others to handle in interstate or foreign commerce any agricultural commodity or competing commodity or their products.

The Secretary has exercised those powers in the inauguration of so-called "adjustment programs" for many of the agricultural commodities designated in Section 11 of the Act, in effecting marketing agreements with processors and producers covering other commodities not specified in the Act and in issuing licenses in a few instances. See U. S. Dept. of Agriculture, *Agricultural Adjustment in 1934*, pp. 3-8. By August 24,

1935, the date of the recent amendments to the Act, "adjustment programs" were in effect with respect to cotton, wheat, tobacco, field corn, hogs, sugar, peanuts, rice and rye. Those programs and all rental and benefit payments made thereunder were expressly legalized, ratified and confirmed by Section 21(c) of the Act added by the recent amendments. The stamp of Congressional approval was thus placed upon the manner in which the Secretary exercised his authority in establishing adjustment programs. Those programs may, therefore, be read into the Act and Section 8(1) may be treated as if it specifically provided for the detailed methods for reduction adopted by the Secretary.

An analysis of an adjustment program will thus show how Congress intended to achieve a balance between production and consumption of a particular commodity through the payment of rental and benefit payments provided for in Section 8. The wheat program is a good example. It covers one of the most important commodities designated in the Act. It was one of the first programs adopted.

B. The Application of the Act in the Wheat Adjustment Program

On June 16, 1933, a plan for applying the provisions of the Act with respect to 1933, 1934 and 1935 wheat crops was announced. See Official Statement of the Wheat Adjustment Plan, Appendix, *infra*, pp. 47-51. This plan provided in substance that each wheat grower who agreed, if required, to reduce his acreage for 1934 and 1935 by not more than 20 per cent of his average acreage during the preceding three years, and who sowed his wheat so that, at the average yield for the last three years, it would produce the number of bushels allotted

to him, would receive benefit payments on that number of bushels. Such allotments were to be proportionate to the grower's share in the total amount of wheat produced in this country which was domestically consumed. The plan contemplated the "organization of semi-legal community machinery" through which its provisions could be effectively applied to producers. See U. S. Dept. of Agriculture, *Handbook of Organization and Instructions* (W-15), p. 35. To participate in the plan a wheat grower was required to make a formal application to enter into a wheat allotment contract. That application contained detailed information as to the crops planted for 1933 and as to the acreage seeded and harvested and the total production in each of the preceding three years. See Application for Wheat Allotment Contract, Appendix, *infra*, pp. 52-57. Upon the signing of this application, the grower was eligible to become a member of the Wheat Production Control Association for his county, to attend its organization meeting and elect its directors. Members of that Association elected also the County Allotment Committee to which was entrusted the task of determining the individual allotment of each grower in the community. That was an elaborate process. It is described in detail in U. S. Dept. of Agriculture, *Handbook of Organization and Instructions* (W-15), pp. 20-33. From statistics computed by the Bureau of Agricultural Economics it had been decided that 54.4 was the "domestic taxable consumption percentage." 54.4 per cent of the average nation wide production of wheat from 1928 to 1932 was accordingly divided among the States according to their corresponding production during that period and subdivided in each State among the several counties. The County Allotment Committees were required to allot to each individual farm on the basis of its average

production during the preceding three year period its share of the county allotment. That was done in accordance with the plan selected by directors of the Wheat Control Association from among the several possible County Allotment plans. Upon the number of bushels so determined, the grower could expect to receive benefit payments in 1933, 1934 and 1935 if he entered into a wheat allotment contract with the Secretary of Agriculture.

That contract[1] bound the grower to reduce his acreage planted to wheat in 1934 and 1935 in an amount prescribed by the Secretary, but not in excess of 20 per cent of the average annual acreage for the last three years, and to seed in 1934 and 1935 an acreage sufficient to produce at the average yield the number of bushels allotted to the farm. In consideration therefor, the Secretary agreed to make an adjustment payment in 1933 of not less than 28 cents on each bushel allotted and to make payments in 1934 and 1935 tending to give the grower the "parity" price on that allotment if the current farm price for wheat was below "parity". The contract was non-assignable and its covenants were to run with the land. The whole agreement was expressly made subject to regulations theretofore or thereafter prescribed by the Secretary pursuant to the Act.

To ensure compliance with the agreements, a vast administrative machinery was set up.[2] See U. S. Dept. of Agriculture, *Handbook on Compliance* (W-40). Detailed regulations and rulings were promulgated, cover-

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[1]See Wheat Allotment Contract, Appendix, *infra*, pp. 58-61; Wheat Adjustment Contract for 1936-1939, Appendix, *infra*, pp. 66-70.

[2]See, for example, the elaborate method of computing and recording the acreage taken out of production. U. S. Dept. of Agriculture, *The Computation of Acreage under Production-Control Contracts* (W-43).

ing among other things, use of the acres taken out of production, the interpretation of the contract, and methods of allotment and of compliance.[3]

The whole plan was designed to attain the objective of the Act, of increasing farm purchasing power, in two ways. In one sense, that objective was to be attained directly and immediately through the contribution to the income of co-operating growers by means of the benefit payment. As was said in the Official Statement of the Wheat Adjustment Plan (Appendix, *infra*, p. 50) the program was intended to secure to co-operating growers "a sum equivalent to the parity price on that portion of their production which is required for domestic consumption. The sum will be made up of two parts: (a) The prevailing market price at which the grower sells his wheat, and (b) the payment made under the Act."

The ultimate aim of the program, however, was not to raise farm purchasing power simply by such direct contributions to income. The mere distribution of funds to those who co-operated was not the final goal. A more fundamental attack was made on the problem. The plan was to curtail production so as to limit supplies of wheat and thus, through the operation of the law of supply and demand, permanently establish a higher price level for all wheat sold. The Agricultural Adjustment Administration points that out in its *Handbook of Organization and Instructions* (W-15) at page 13:

> "Without that readjustment, a processing tax upon wheat, payable to wheat growers, would increase production, would lower ultimately the base price, and make it necessary to increase the tax. This proc-

[3] See U. S. Dept. of Agriculture, Wheat Regulations, Series 2, and Administrative Rulings Relating to the 1933-34-35 Wheat Allotment Contract.

> ess would go on until an unmanageable surplus would demoralize the wheat market."

As the petitioner says in its brief (Brief, p. 198), control of production was deemed essential to a permanent solution of the farm problem. But that control could not be achieved except through "the centralizing power of the Government". See U. S. Dept. of Agriculture, *Agricultural Adjustment,* at page 9. In that document the Administrator of the Agricultural Adjustment Act further stated (p. 9):

> "Experience of cooperative associations and other groups has shown that without such Government support, the efforts of farmers to band together to control the amount of their product sent to market are nearly always brought to nothing. Almost, always, under such circumstances, there has been a noncooperating minority, which, refusing to go along with the rest, has stayed on the outside and tried to benefit from the sacrifices the majority has made."

It is here that the benefit payment serves its other purpose. It is designed, as the Administrator puts it (p. 9), "to keep this noncooperating minority in line, or at least prevent it from doing harm to the majority." It is "a mechanism to control supplies to profitable demand." U. S. Dept. of Agriculture, *Handbook of Organization and Instructions* (W-15), p. 13.

Manifestly neither Congress nor those administering the Act believed that the fundamental purposes of the Act could be attained by any temporary measures. On the contrary, the whole scheme contemplated permanent adjustment of production and permanent maintenance of the desired price level. The President recognized this in his statement to the press, on October 25, 1935, as to the future of the Act:

> "But it was never the idea of the men who framed the act, of those in Congress who revised it nor of Henry Wallace nor Chester Davis that the AAA should be either a mere emergency operation or a static agency.
>
> "It was their intention—as it is mine—to pass from the purely emergency phases necessitated by a grave national crisis to a long time, more permanent plan for American agriculture."

See *The Southwestern Miller*, Vol. 14, No. 35, p. 33. The continuation of the program so far as it related to wheat was announced on August 10, 1935. See U. S. Dept. of Agriculture, *Wheat Adjustment Handbook—1936-1939*, p. 1. It was contemplated that contracts similar in form to the original 1933 contract should be made with growers covering the period from 1936-1939. See Wheat Adjustment Contract for 1936-1939, Appendix, *infra*, pp. 62-70. This program was ratified by Congress in Section 21(c) added by the amendments to the Act. Congress itself, by amplifying the Act in the amendments approved August 24, 1935, and by specifically fixing the rate of taxes on particular commodities through December 31, 1937, has firmly indicated its intention that the Act was no "mere emergency operation".

C. The Place of the Processing Tax in the Scheme of the Act

The wheat adjustment plan was formally initiated by proclamation of the Secretary of Agriculture on June 20, 1933, of his determination to make benefit payments with respect to wheat. Under the terms of Section 9(a) of the Act a tax upon the processing of wheat came into effect automatically at the beginning of the marketing year for wheat next following that proclamation.[4] In the words

[4] The first marketing year for wheat was proclaimed to begin on July 9, 1933. U. S. Dept. of Agriculture, Wheat Regulations, Series 1.

of that section, the tax was laid "to obtain revenue for extraordinary expenses incurred by reason of the national economic emergency." But, as the Act shows, the principal "extraordinary expenses" which the proceeds of the tax were to pay were the benefit payments under the plan. Thus, the rate of tax was prescribed by Section 9(b) and (c) to equal the difference between the current average price for wheat and its price, in terms of purchasing power, prevailing between August, 1909 and July, 1914. The gap between the actual and "parity", or ideal, price which the benefit payment was to bridge is, therefore, the precise measure of the tax.[5]

The tax on any commodity comes into effect only when the Secretary proclaims his determination to make rental or benefit payments with respect to that commodity. Section 9(a). It terminates at the end of the marketing year during which the Secretary proclaims that such payments are to be discontinued. Section 9(a). The inauguration, the termination and the amount of the tax are, therefore, all bound in with the making of rental or benefit payments. Moreover, under Section 12(b) of the Act the proceeds of all processing taxes were directly appropriated to the Secretary to be available for the expansion of markets, administrative expenses, rental and benefit payments and refunds on taxes. The function of the tax in serving primarily as a means of financing the benefit payments has been con-

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[5] This is well put in *The Processing Tax*, a pamphlet issued by U. S. Dept. of Agriculture, at p. 4:

> "For instance, in 1932 it took nearly 2 bushels of wheat to buy as much industrial goods as one bushel would buy before the war. By adding 30 cents per bushel to the 1932 market price of wheat the old buying power could be restored. That is why the processing tax was set at 30 cents per bushel, and most of this money was paid to cooperating farmers in the form of benefit payments."

sistently emphasized by the Department of Agriculture.[6] The amount of the benefit payment on any commodity was regarded as dependent upon the estimated amount of the taxes to be collected upon the processing of the commodity. See Official Statement of Wheat Adjustment Plan, Appendix, *infra*, p. 49. In accordance with the formula prescribed in the Act, the Secretary had fixed the rate of tax at 30 cents per bushel of 60 pounds.[7] Since, in the Official Statement of the Plan, it was estimated that "the whole plan would be accomplished at an annual administrative cost of 2 cents per bushel", the benefit payment on each bushel of the allotted amount was originally fixed at 28 cents.[8]

II.

THE ACT IS NOT A REVENUE MEASURE. THE TAXES ARE SIMPLY THE MECHANICS TO ACHIEVE AN ECONOMIC REFORM WHICH CONGRESS MAY NOT ACCOMPLISH DIRECTLY OR INDIRECTLY

The place of the tax in carrying out the program is clear. As the Agricultural Adjustment Administrator said, it is "the heart of the law" and a means of "accomplishing one or both of the two things intended to

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[6] Thus it is stated, perhaps not too precisely, in U. S. Dept. of Agriculture, *Achieving A Balanced Agriculture*, p. 38:

> "Farmers should not forget that all the processing tax money ends up in their own pockets. Even in those cases where they pay part of the tax, they get it all back. Every dollar collected in processing taxes goes to the farmer in benefit payments."

See also U. S. Dept. of Agriculture, *The Processing Tax*, p. 1:

> "Proceeds of processing taxes are passed to farmers as benefit payments."

[7] U. S. Dept. of Agriculture, Wheat Regulations, Series 1.

[8] In May, 1934, it was raised to 29 cents. See U. S. Dept. of Agriculture, *Agricultural Adjustment in 1934*, p. 75. Subsequently, in August, 1935, it was raised to 33 cents.

help farmers attain parity prices and purchasing power". See U. S. Dept. of Agriculture, *Agricultural Adjustment,* p. 9. It is not pretended that it serves any other purpose or has any other function than as an instrument for achieving the economic and social reform at which the Act aims. Plainly, this Court cannot overlook that fact. As was said in *Child Labor Tax Case,* 259 U. S. 20, 37: "All others can see and understand this. How can we properly shut our minds to it?" We submit that the taxing provisions of the Act cannot be considered as if they stood alone. Their validity can be tested only in relation to their ultimate purpose. We recognize, of course, that a law which purports to do no more than impose a tax is not to be judged in the light of the supposed motives that induced it or the effects that flow from it. *McCray* v. *United States,* 195 U. S. 27; *A. Magnano Co.* v. *Hamilton,* 292 U. S. 40. But where the real purpose of a measure laying a tax is apparent on its face, courts are not powerless to ascertain and weigh that purpose when the validity of the measure is challenged. On the contrary, all its provisions must be carefully scrutinized to determine what the primary purpose of the measure is. *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; *A. Magnano Co.* v. *Hamilton, supra,* at 45, 46. This Court said in *Nigro* v. *United States,* 276 U. S. 332, 353: "Congress by merely calling an Act a taxing act cannot make it a legitimate exercise of taxing power under Sec. 8 of Article I of the Federal Constitution, if in fact the words of the act show clearly its real purpose is otherwise". It is, therefore, idle to contend, as the petitioner does, that apart from the use to which the proceeds of the taxes are put, the provisions of the Act, so far as they lay processing and floor-stock taxes, are nothing but a revenue measure.

The question whether the Act is a revenue measure must be decided in the light of its ultimate purpose so far as that is apparent from its other provisions.

A. The Act Is Not A Revenue Measure Simply Because It Raises Money

The petitioner contends that because the taxing provisions of the Act have the indicia of a revenue measure they must be treated as a revenue measure whatever their ultimate purpose may be (Brief, pp. 24-29). It points to the fact that the title of the Act expresses the purpose of raising revenue, that proceeds of the taxes are paid into the Treasury of the United States, that appropriation is made of the revenue expected to result, and that in actual operation vast sums of money have been raised (Brief, pp. 25, 26). But all these elements have been present in other measures which, because of their ultimate purpose, have been held not to be revenue measures at all. Of course, the fact that the title of the Act states that one of the purposes of the Act is "to raise revenue for extraordinary expenses" has no tendency to prove that it is a revenue measure. Other acts, not revenue measures, have expressed such a purpose. *Child Labor Tax Case,* 259 U. S. 20; *Board of Trustees of the University of Illinois* v. *United States,* 289 U. S. 48. Nor does the fact that the Act has raised vast sums of money prove it to be simply a revenue measure. Thus in the *Head Money Cases,* 112 U. S. 580, the provision of an "Act to regulate immigration", requiring shipowners to pay a duty on each passenger coming to any port within the United States from a foreign port, was deemed not to impose a tax. Similarly in *Board of Trustees of the University of Illinois* v. *United States,* 289 U. S. 48, this Court de-

clined to treat the Tariff Act of 1922, which imposed duties upon the importation of particular articles, as an exercise of the power to lay taxes. So state laws providing for the exaction of money in the form of a tax have often been treated as not revenue measures at all. *Phillips* v. *Mobile,* 208 U. S. 472; *Gundling* v. *Chicago,* 177 U. S. 183; *Morgan* v. *Louisiana,* 118 U. S. 455. Payment of the money raised into the Treasury of the United States is immaterial. Money is frequently paid into the treasury of a government to be held as a fund for particular purposes. See *Head Money Cases, supra* (funds raised from duty paid into Treasury of the United States to be used for the temporary care of immigrants); *Railroad Retirement Board* v. *Alton Railroad Co.,* 295 U. S. 330 (funds raised by compulsory assessments on carriers under the Railroad Retirement Act, Act of June 27, 1934, c. 868, 48 Stat. 1283, paid into Treasury of United States); *cf. Mountain Timber Co.* v. *Washington,* 243 U. S. 219 (assessments under the Workmen's Compensation Act of Washington paid into treasury of State). Such payment does not make the exaction a tax. Nor is appropriation of the fund important. In the *Head Money Cases, supra,* the funds raised by the exaction were appropriated to the purposes of the statute. Yet it was held that the exaction was not a tax within the meaning of the Constitution.

The petitioner's analysis proves no more than that the Act requires, and has raised, money to accomplish its plans of economic and social reform. Because it does so, the petitioner contends that it is a taxing act and that the reform plan may be justified as an exercise of the power to lay taxes. But, as this Court has frequently pointed out, that power may be made the basis for achieving social ends only so far as those ends are

incidental. They must "be reached only through a revenue measure and within the limits of a revenue measure." *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 402; *Linder* v. *United States,* 268 U. S. 5, 17. As it was put in *Hampton & Co.* v. *United States,* 276 U. S. 394, 412:

> "So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate Congressional action."

See also *Child Labor Tax Case,* 259 U. S. 20, 38; *Nigro* v. *United States,* 276 U. S. 332, 354. Unless the primary purpose of the act is to secure income available for expenses and obligations of the government, it is not, it is submitted, a revenue raising measure at all. "Revenue", as this Court said in *United States* v. *Bromley,* 12 How. 88, 97, "is the income of a State". The power to tax is the power to provide that income. Where a law does provide it, it is nonetheless a revenue measure because it also achieves, and was intended to achieve, some regulatory purpose. *License Tax Cases,* 5 Wall. 462; *United States* v. *Doremus,* 249 U. S. 86; *Nigro* v. *United States,* 276 U. S. 332; *Hampton & Co.* v. *United States,* 276 U. S. 394. But where funds are raised not to furnish income for the government but simply to provide the mechanics for achieving a plan of social or economic reform, the plan cannot be justified under the power to raise revenue. In such a case, reform is not incidental to the tax; the tax is incidental to reform.

It has frequently been held that a measure raising funds, which can never go to swell the income of the government but are all devoted to carrying out some

other function of the government, is not a taxing or revenue raising measure at all. In the *Head Money Cases,* 112 U. S. 580, the funds raised, although paid into the United States Treasury, were, under the terms of the Act, to be used solely to defray the expense of regulating immigration and for the care and relief of immigrants. The Court there said, at page 595:

> "The sum demanded of him [the shipowner] is not, therefore, strictly speaking a tax or duty within the meaning of the Constitution. The money thus raised, though paid into the Treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government. It constitutes a fund raised from those who are engaged in the transportation of these passengers, and who make profit out of it, for the temporary care of the passengers whom they bring among us and for the protection of the citizens among whom they are landed."

In *Morgan* v. *Louisiana,* 118 U. S. 455, 461, in answer to the contention that a statute imposing a quarantine fee was a tax on tonnage and so unconstitutional, it was said:

> "A tax is defined to be 'a contribution imposed by government on individuals for the service of the State'. It is argued that a part of these fees go into the treasury of the State or of the city, and it is therefore levied as part of the revenue of the State or city and for that purpose. But an examination of the statute shows that the excess of the fees of this officer over his salary is paid into the city treasury to constitute a fund wholly devoted to quarantine expenses, and that no part of it ever goes to defray the expenses of the State or city government."

Cases dealing with the provision of Section 7 of Article I of the Constitution, requiring "all bills for raising revenue" to originate in the House of Representatives, further illustrate that the raising of funds for the accomplishment of a purpose other than meeting the expenses of the government is not an exercise of the taxing power. In *Twin City Bank* v. *Nebeker*, 167 U. S. 196, Section 41 of the National Bank Act, c. 106, 13 Stat. 99, 111, requiring associations organized under the Act to pay a duty upon the average amounts of their notes in circulation, was held not to be a true revenue measure.

The Court said, at 203:

> "The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the government."

Again, in *Millard* v. *Roberts*, 202 U. S. 429, acts of Congress providing for the elimination of grade crossings, the relocation of tracks and the building of a union station in the city of Washington, D. C., and requiring a tax to be levied and assessed to provide funds to be paid to the railroads for carrying out those purposes, were held not to be revenue measures because, as the Court put it, at page 437:

> "Whatever taxes are imposed are but means to the purposes provided by the Act."

See also *United States* v. *Norton*, 91 U. S. 566; *Twin Falls Canal Co., Ltd.* v. *Foote*, 192 Fed. 583 (C. C. D. Idaho).

The present Act, like the acts considered in *Head Money Cases*, 112 U. S. 580, *Twin City Bank* v. *Nebeker*, 167 U. S. 196, and *Millard* v. *Roberts*, 202 U. S. 429, does not purport to be simply a measure to raise money to meet the general expenses and obligations of the government or even to pay particular debts. Its purpose is something quite different than the mere raising and spending of money. Whatever sums it raises are but a means to effectuate its great object—the carrying out of a scheme to raise agricultural prices and to balance production of agricultural commodities with the demand therefor. Only such sums as will be necessary to achieve that object are raised. All such sums are appropriated in advance to be used only for that purpose.

Where the government has the power to accomplish its ends through direct legislation, its action is not invalidated because it does so through an exaction loosely termed a "tax." *Head Money Cases*, 112 U. S. 580, 596; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237. But that exaction is not sustained as an exercise of the power to raise revenue. It must stand or fall as a regulation. *Head Money Cases*, 112 U. S. 580. Where, however, the government has no such power, the exaction cannot, it is submitted, be sustained. If it is not strictly a tax, but simply the mechanics for accomplishing economic or social reform, its validity is dependent on the power of the government to accomplish that reform directly.

B. Direct Legislation to Accomplish the Purposes of the Act Is Beyond the Power of Congress

But the Federal Government is not empowered to achieve directly the ends at which the Agricultural Adjustment Act aims. Both the fixing of prices for agricultural commodities and control over the production and

marketing of such commodities are beyond its province. The power to establish by direct legislation the prices for agricultural commodities rests, if anywhere, with the States. *Cf. Nebbia* v. *New York,* 291 U. S. 502. So, too, does the power to limit the production of agricultural commodities. *Cf. Champlin Refining Co.* v. *Corporations Commission of Oklahoma,* 286 U. S. 210. This Court pointed out, in *Kidd* v. *Pearson,* 128 U. S. 1, 21, that the effective regulation of agriculture, horticulture, stock raising and the like requires control of "delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management." As Thomas Jefferson aptly remarked (Writings (Ford Ed.), Vol. I, p. 113):

> "Were we directed from Washington when to sow, & when to reap, we should soon want bread."

It is, of course, fundamental that Congress has no general authority to legislate for the nation as a whole. *Kansas* v. *Colorado,* 206 U. S. 46. Nor does the Constitution confer upon Congress any police power. *Keller* v. *United States,* 213 U. S. 138; *United States* v. *DeWitt,* 9 Wall. 41. Plainly the power to regulate interstate commerce would not sustain direct legislation to achieve the ends aimed at in the present Act. That power would permit control of the prices and the production of agricultural products only so far as they were "in the current of" or directly affected interstate commerce. *A. L. A. Schechter Poultry Corporation* v. *United States,* 295 U. S. 495. But in this Act, as was said with relation to the Future Trading Act in *Hill* v. *Wallace,* 259 U. S. 44, 68, 69, Congress "did not have the exercise of its power under the commerce clause in mind and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter

clause." Nor does the petitioner in its brief suggest that the broad purposes of the Act could be reached directly under that power.

It is, however, urged that the scheme of the Act may be justified as an exercise of the powers of Congress to stabilize and preserve the credit structure of the nation, to protect the banks and other credit agencies which Congress had established and to protect the credit of the Government itself (Petitioner's Brief, pp. 241-262). The argument apparently is that Congress may adopt any measure reasonably appropriate to improving the economic life of the country on the basis of a broad power to preserve the national credit. But, as was said in *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 549, "The argument of the Government proves too much." If it were sound, "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *A. L. A. Schechter Poultry Corporation* v. *United States, supra*, at 548. In effect, the suggestion is not substantially different from that made and decisively rejected by this Court in *Kansas* v. *Colorado*, 206 U. S. 46, 89-91, that all powers which are national in their scope must be found vested in the Congress of the United States.

C. Congress May Not Use the Taxing Power for the Sole Purpose of Achieving Ends Not Entrusted to the Federal Government

If Congress cannot legislate directly to attain the end sought, it cannot, it is submitted, attain it indirectly through the device of raising and spending money solely for that purpose. Where the purported exercise of a federal power achieves no other purpose and has no other aim than to perform a function within the power

of the States, it is invalid. *Hammer* v. *Dagenhart*, 247 U. S. 251; see *Nigro* v. *United States*, 276 U. S. 332, 353; *Linder* v. *United States*, 268 U. S. 5, 17; *United States* v. *Doremus*, 249 U. S. 86, 93. The petitioner contends that this principle is inapplicable to the present Act because Congress has attempted merely to *affect* production and prices, not *regulate* them (Petitioner's Brief, pp. 262-279). That is to say, in effect, that Congress is completely unfettered in the choice of the functions it may perform so long as it can perform them without coercion. It may assume the normal and ordinary duties of the States if it can so frame the means used as to avoid semblance of regulation. It cannot obtain sovereignty by force, but it may by purchase.

The potentialities of the petitioner's argument are obvious. If Congress may raise and spend money for the sole purpose of achieving ends hitherto admitted to be within the exclusive power of the States, all the other limitations on its powers become futile. Indeed, Congress has already acted upon that assumption. By Acts of August 29, 1935, Public No. 399 and Public No. 400, it has attempted to provide a retirement system for employees of carriers, through the exercise of the power to tax and appropriate, which this Court held it could not provide through the exercise of its power to regulate commerce. *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330. By Act of August 14, 1935, Public No. 271, it has attempted through the exercise of similar powers to establish a system for paying monthly old-age benefit payments to individuals, with certain exceptions, over the age of sixty-five. Is it not reasonable to expect that it may attempt to use the same device to establish the wages and hours of employees in the internal commerce of a State, held beyond its province in *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S.

495? Or, in other ways, to change, in accordance with its own conceptions, the pattern of the entire social and economic life of the country?

The theory underlying this argument, we submit, runs counter to views long held and consistently expressed by this Court, that federal powers cannot be used legitimately solely to achieve a purpose plainly within State power. As Chief Justice Marshall put it in a much-quoted paragraph in *McCullough* v. *Maryland*, 4 Wheat. 316, 423:

> "Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

Again in *Linder* v. *United States*, 268 U. S. 5, 17, this Court said:

> "Congress cannot under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress, ostensibly enacted under power granted by the constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within power reserved to the States is invalid and cannot be enforced."

That doctrine is as applicable to the power to lay taxes and appropriate the proceeds as it is to any other federal power. With specific reference to the power to tax, Chief

Justice Marshall said, in *Gibbons* v. *Ogden*, 9 Wheat. 1, 199:

> "Congress is not empowered to tax for those purposes which are within the exclusive province of the States."

And in *Veazie Bank* v. *Fenno*, 8 Wall. 533, 541, this Court, while construing the taxing power broadly, specifically stated:

> "There are indeed certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

The test is not whether the purposes or ends which it is sought to accomplish are achieved by coercion, but whether, however achieved, they are the kind of purposes or ends which have been entrusted to the Federal Government. Were any other test applied we should have a centralized, not a federal, system.

All powers granted by the Constitution are subject to the fundamental qualification that the federal nature of our government must be maintained.* The possibility that particular legislation might impair the dual system of government, which it was the purpose of the Constitution to preserve, has been adverted to by this Court as a reason for holding it invalid. See *Child Labor Tax Case*, 259 U. S. 20, 37, 38; *A. L. A. Schechter Poultry Corpora-*

* The necessity of maintaining our dual system of government is the basis for the reciprocal immunity from taxation enjoyed by instrumentalities of the Federal and State governments. See *Board of Trustees of the University of Illinois* v. *United States*, 289 U. S. 48, 59; *Willouts* v. *Bunn*, 282 U. S. 216, 225; *The Collector* v. *Day*, 11 Wall. 113, 127.

tion v. *United States,* 295 U. S. 495, 548. As was said in *Keller* v. *United States,* 213 U. S. 138, 149:

> "While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. *Fairbank* v. *United States,* 181 U. S. 283. To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in *Texas* v. *White,* 7 Wall. 700, 725, that 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.'"

We submit, therefore, that since the Act raises and appropriates money only to accomplish the fixing of prices and the adjustment of production of agricultural commodities, which Congress is powerless to accomplish by direct legislation, it cannot be sustained as a legitimate exercise of the power to lay taxes and raise revenue.

III.

SINCE THE PURPOSE OF THE PROCESSING TAX IS TO COMPEL PROCESSORS TO PAY PREDETERMINED PRICES FOR AGRICULTURAL COMMODITIES, IT IS NOT A TAX, BUT IS A POLICE MEASURE AND BEYOND THE POWER OF THE FEDERAL GOVERNMENT

We have attempted to demonstrate that inasmuch as the ultimate purpose of the Agricultural Adjustment Act is to increase the purchasing power of the farm population by controlling the production of agricultural commodities it is not a revenue measure, and the processing tax, viewed as a means of achieving that end, is not an exercise of the power to lay taxes. The processing tax,

however, has another and more immediate object—namely to compel payment of parity prices to the farmer during the period necessary for the consummation of the adjustment program.[10] In this aspect, the processing tax is nothing less than a device for the direct fixing of prices, in addition to being designed to regulate prices indirectly through control of production as we have already pointed out. This may be illustrated by further reference to the Wheat Adjustment Program as a typical example.

At the inception of the wheat program the parity price was determined to be considerably in excess of the market price, the difference being estimated at thirty cents per bushel. Obviously, the reduction of planted acreage would not result in an immediate equalization of these prices, and since it was thought necessary to improve the purchasing power of the farmer without delay, the plan contemplated that the difference should be made up to the producer by the Government. The Secretary of Agriculture accordingly proclaimed on June 20, 1933, that rental or benefit payments would be made with respect to wheat and that on and after July 9, 1933, the beginning of the marketing year, there should be levied on the processing of wheat a "tax" at the rate of thirty cents per bushel.[11]

The rate of the benefit payments with respect to wheat was, of course, like the rate of tax, predicated on the difference between the farm and parity prices. Since, however, it was estimated that the expense of administering the wheat plan would be approximately two cents per bushel annually, and it was desired that the adjust-

[10] "The second way in which the processing tax and benefit plan helps farmers is in making a direct contribution to their income." U. S. Dept. of Agriculture, *Agricultural Adjustment*, p. 10.

[11] U. S. Dept. of Agriculture, Wheat Regulations, Series 1 (June, 1933).

ment programs should be self-supporting, the rate of payments for the first marketing year (1933-34) was fixed at twenty-eight cents per bushel.[12] In 1934 this was increased to twenty-nine cents per bushel.[13] Payments were limited to that part of the farmer's base production (i.e. average production during the three preceding years) which it was estimated would be domestically consumed.[14] In 1933 this amounted to fifty-four per cent.[15] Processing taxes are similarly confined to wheat consumed in the United States, wheat ground for export being exempted from the operation of the tax. (See Section 17 of the Act.) Thus an approximate balance is maintained between the amount of benefit payments and the amount of processing taxes collected with respect to wheat.

It is apparent, therefore, that except for a small deduction for administrative expenses the thirty cents paid by the processor with respect to each bushel of wheat ground is paid over to the cooperating farmer for each bushel he is expected to produce for domestic consumption. The processor is compelled to pay a fixed "parity" price, consisting of the market price plus the tax, and the farmer is given the proceeds of the tax to make up the parity price to him. Since both the market price and the parity price change from time to time, it

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[12] U. S. Dept. of Agriculture, *Handbook of Organization and Instructions* (W-15), p. 3; *Agricultural Adjustment*, p. 49.

[13] U. S. Dept. of Agriculture, *Agricultural Adjustment in 1934*, p. 75.

[14] See U. S. Dept. of Agriculture, *Agricultural Adjustment in 1934*, p. 235:

> "The payments are calculated to make up as much as possible of the difference between what the cooperating farmer sells for consumption in the United States and the price which would place him in the position of parity, relative to the country's other producers, that he occupied in the well-balanced period before the war."

[15] U. S. Dept. of Agriculture, *Agricultural Adjustment*, p. 49.

is provided in the Act that the rate of tax "shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him" to keep it equivalent to the difference between those prices. (Section 9(a).) If this difference becomes permanently and substantially greater or lower than it was at the outset, the rate of tax and benefit payments is correspondingly adjusted to maintain the purchasing power of the farmer at the same pre-war level.[16] If the market price rises to the desired level, the purpose of the Act is accomplished, and the tax is terminated. (Section 13.)

There can be no question that the raising of the market price to the ideal minimum price is the design of the Act. Until this can be brought about by controlling the supply, payment of the ideal price is enforced by statute. The Government intervenes between the purchaser and the producer of wheat and fixes the consideration for the purchase. The Act is, therefore, in the most real and immediate sense, a price-fixing measure.

The Government's assertion to the contrary is patently incorrect. While it may be true that the effect of the processing tax on the prices received by processors for their manufactured products is "no different from that of any other manufacturer's excise" (Brief, p. 28), the purpose and effect of the tax with respect to prices paid by processors for the raw commodities they purchase are immediate and apparent. The incidence of the tax on the processor directly establishes the price he must pay. The tax is, in fact, a concrete part of that price. He cannot use the wheat for the only pur-

[16] While no change has been made in the tax rate with respect to wheat since the inception of the wheat program, this indicates only that the Secretary has not regarded the price fluctuations as symptomatic of any permanent change in the relative price levels. *Cf.* U. S. Dept. of Agriculture, *Agricultural Adjustment*, pp. 7-8.

pose for which he buys it until he has paid the parity price. The taxing machinery of the government merely furnishes a conduit through which the additional payment passes from one party to the other.

It is clear that such price-fixing could not constitutionally be achieved by direct federal regulation. While the fixing of minimum prices by the states has been sustained as an exercise of their inherent police powers (*Nebbia* v. *New York*, 291 U. S. 502), it has long been settled that no general police power resides in the Federal Government, and that federal police regulation is permissible only in aid of, or when purely incidental to, the exercise of the powers expressly delegated to it (*Keller* v. *United States*, 213 U. S. 138; *Kansas* v. *Colorado*, 206 U. S. 46; *Patterson* v. *Kentucky*, 97 U. S. 501). Were Congress to attempt by legislative fiat to decree that no purchaser of wheat should pay therefor less than a specified price, or a "parity price" to be determined from time to time by the Secretary of Agriculture, such a decree would be plainly invalid and nugatory. The Agricultural Adjustment Act accomplishes precisely the same result, and in an even more drastic manner, by directly confiscating the purchaser's money and transferring it to the producer, to the end that the latter may receive the price which the Government conceives to be the price to which he is entitled.[17] From the standpoint of the processor, the tax is comparable to a penalty designed to compel him to pay a predetermined price. This scheme for price regula-

[17] See U. S. Dept. of Agriculture, *Agricultural Adjustment*, p. 10:

"By establishing the parity principle for agriculture, Congress, in the Agricultural Adjustment Act, recognized a fundamental concept of the national recovery program, which is that those large economic groups performing essential functions for society must have a fair share in the national income. The benefit payments may be considered a form of compensation by the rest of society to farmers for their service in supplying food and raw materials."

tion is not in aid of the power to lay taxes, nor is it purely incidental to the exercise of that power. It is an end in itself, apparent on the face of the Act. We submit that such regulation, amounting in truth to confiscation, cannot be validated by invoking the name "tax". Legislation must be tested in terms of purpose and effect, not merely in terms of its mechanical nicety.

IV.

THE PROCESSING TAX IS NOT A TAX BECAUSE ITS IMMEDIATE PURPOSE IS A PRIVATE ONE, AND THE PUBLIC PURPOSE IS SECONDARY AND INDIRECT

We have shown heretofore that the Agricultural Adjustment Act does not purport to be a revenue measure because its ultimate and declared purpose is not to raise revenue but to govern the production of agricultural commodities and fix the prices of such commodities, and that consequently it cannot be sustained as an exercise of the taxing power. We contend further that the so-called processing tax, upon which the entire adjustment program is predicated, is not a tax because its immediate purpose is not primarily a public purpose but a private one—namely, to increase directly the financial resources of a single group—and such effects as it may have on the public welfare are secondary and wholly indirect.

A. The Use to Which the Proceeds of the Processing Taxes Are Appropriated May Be Challenged by the Processor and Considered by the Court

The Government contends that "public policy" precludes the citizen from avoiding the payment of "otherwise valid taxes" by questioning their purpose or the use to which their proceeds are appropriated. (Brief, pp. 122-135.) This argument, we submit, entirely overlooks the fact that it is of the essence of a tax not only that its

primary object is to raise money, but that it is laid for a public purpose. *United States* v. *Railroad Co.*, 17 Wall. 322, 326; *Loan Association* v. *Topeka*, 20 Wall. 655, 664; *Cole* v. *La Grange*, 113 U. S. 1, 6. An exaction of money by the sovereign from the citizen is not made a tax by calling it so. *Nigro* v. *United States*, 276 U. S. 332, 353; *United States* v. *One Ford Coupe Automobile*, 272 U. S. 321. Nor, we submit, is such an exaction a tax because it is collected in the same manner as are taxes, and its proceeds are deposited in the general treasury. Unless the purpose be a public one, the exaction cannot be justified as an exercise of the taxing power, but is a taking of property for private use and thus beyond the power of the government.

It follows that the question whether an exaction is for a public or governmental purpose is inherent in the question whether such exaction can be sustained under the constitutional provision authorizing Congress to lay "taxes." The Government's argument, we submit, confuses the right of the citizen to inquire whether he is being *taxed*, with the practical impossibility of establishing in the usual case that the money of any particular taxpayer is being used for an improper purpose. This Court has held that an individual taxpayer may not bring injunction proceedings to question the constitutionality of an expenditure from the general funds in the Treasury on the ground that such expenditure would result in an increased burden upon the taxpayer, because the potential injury to a single taxpayer is so remote and unascertainable as to give him no standing to apply for equitable relief. In *Massachusetts* v. *Mellon*, 262 U. S. 447, the Court said (p. 487):

> "But the relation of a taxpayer of the United States to the Federal Government is very different. His interests in the monies of the Treasury—partly

realized from taxation and partly from other sources—is shared with millions of others, is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court in equity."

In such a case public policy may properly be regarded as outweighing the interest of the citizen, which is "shared with millions of others" and "is comparatively minute and indeterminable." When, however, a tax is laid for a specific, predetermined object, and all or substantially all of the proceeds are appropriated thereto, the relative importance of public policy as compared with the right of the taxpayer not to have his property taken for any but a public purpose is wholly changed. The taxpayer is not seeking to prevent an expenditure from general public funds in which he has only a remote and indeterminable interest, but is seeking to prevent the collection of a specific amount of money which is about to be taken away from him. He is not merely threatened with the possibility of increased taxes in the future, but is faced with an immediate exaction for a prescribed purpose. Such a case is plainly distinguishable from cases like *Massachusetts* v. *Mellon, supra,* for the taxpayer can show that a definite financial burden is about to be laid on him *only* to provide for the expenditure which he is challenging. There is a direct connection between the exaction and the appropriation. In the words of this Court in *Massachusetts* v. *Mellon, supra,* (p. 488), the taxpayer "has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement and not merely * * * suffers in some indefinite way in common with people generally."

In the case of the processing tax, the very Act which lays the tax appropriates its proceeds for purposes which the processor alleges to be unconstitutional. Under Section 12(b) of the Act as it stood before the recent amendments the proceeds of all processing taxes were appropriated to the Secretary of Agriculture for the purpose of making payments under the Act. The rewording of that section by the amendatory Act of August 24, 1935, to provide for an appropriation, not of the proceeds of the taxes, but of "a sum equal to the proceeds" cannot conceal the fact that every dollar collected in processing taxes is destined for use in carrying out the adjustment program. The amendment is, we submit, a mere subterfuge unworthy of serious consideration. Section 9(a), which remains unchanged, still boldly asserts that the purpose of the processing tax is "To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency," that is, by reason of the disparity in prices between agricultural and other commodities. The substantive fact remains clear—that the money exacted from processors is used to make the payments challenged as illegal. The injury to the processor is immediate, substantial and ascertainable.

Under these circumstances, we submit, the right of the processor to challenge the purpose for which his money is to be taken from him is on a par with the right of a land owner to inquire whether the purpose for which the Government seeks to condemn his land is a public one. See *United States* v. *Gettysburg Electric Railway Co.*, 160 U. S. 668. Inquiry regarding the legitimacy of the purpose is "absolutely necessary to the determination of the rights of the parties" (*United States* v. *Realty Co.*, 163 U. S. 427, 433). To say that the "normal functioning of government" will be endangered if those subject to the processing tax are permitted to object to the purposes

for which the tax is imposed (Pet. Brief, p. 123) begs the question, for the very question here is whether the regulation of agricultural production and prices is a normal function of government and may be achieved through an exercise of the power to lay taxes.

B. The Processing Tax Cannot Be Sustained as an Exercise of the Taxing Power, Because Its Immediate Purpose Is A Private One and Such Effects as It May Have on the Public Welfare Are Secondary and Remote

We have demonstrated earlier in this brief (*supra*, pp. 8-17) by reference both to the statute itself and to the practical operation of a typical adjustment program under the statute, that the Agricultural Adjustment Act is frankly designed to redistribute purchasing power and that the proceeds of processing taxes are devoted directly to that end. The tax itself, as we have shown, is a specific levy for the payment of a specifically traceable farm bounty. The Act defines a class of contributors and a class of beneficiaries, and provides for a transfer of funds from the one class to the other for the immediate and declared purpose of increasing the financial resources of the latter.

It is sought to justify this deliberate redistribution of income on the theory that by some favorable adjustment of the farmer's economic condition the general public will ultimately be benefited. But such a speculative and indirect benefit to the public as may conceivably result from the hoped-for rehabilitation of farmer purchasing power is not enough to justify the exaction of money from the processor as being for a public purpose. The precise contention now advanced by the Government has been decisively rejected by this Court in *Loan Association* v. *Topeka*, 20 Wall. 655, *Parkersburg* v. *Brown*, 106 U. S. 487, and *Cole* v. *LaGrange*, 113 U. S. 1.

In *Loan Association* v. *Topeka, supra,* an expenditure of money by a municipality, acting under express authorization from the State legislature, for the purpose of inducing a manufacturing concern to establish a plant in the community was held to be in violation of the state constitution. The necessary funds were to be raised by taxation and were to be donated to the manufacturing company. This Court held that the immediate purpose was to confer benefits upon a private enterprise and that this was a private purpose which would not justify an exercise of the taxing power. In answer to the argument, substantially identical with that advanced by the Government here, that the ultimate object of the appropriation was to benefit the community as a whole, the Court said (p. 665):

> "• • • If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

The principle established by that decision and reaffirmed by this Court in *Parkersburg* v. *Brown, supra,* and *Cole* v. *LaGrange, supra,* is that the raising of money can be sustained as an exercise of the power to tax only if the money is to be put directly to a public use; that there must be a direct connection between the expenditure and the public welfare; that the sovereign may not

deliberately take the property of one citizen and give it to another even though it may be thought that the interests of the public are closely related to the interests of the recipient of the bounty.

There is no inconsistency between this principle and the principle that courts will not normally review a legislative determination that a particular appropriation will be conducive to the public welfare. (See authorities cited at pages 172 to 179 of the Government's brief.) In the *Loan Association* case, *supra,* this Court did not question that the subsidizing of the manufacturing concern by the city would ultimately inure to the benefit of the community as a whole. The statute authorizing the expenditure expressly provided for the encouragement of such "enterprises as may tend to develop and improve such city" (20 Wall. at 657), and it was not suggested that the location of a factory in the city would not in fact make for the general prosperity. Nor do we suggest here that the Court should inquire into the soundness of the economic theory upon which the processing tax is sought to be justified. It may well be that the bestowal of benefit payments upon farmers will, both by increasing their present purchasing power and by inducing them to curtail production in order to increase their purchasing power in the future, contribute in some measure to the economic welfare of the country as a whole. But no matter how accurate may be the Government's conclusions as to the efficacy of the adjustment program and no matter how emphatically it may be asserted that the ultimate and controlling purpose is to enhance the general welfare, it is none the less true here, as in the *Loan Association* case, that the money in question is being used primarily "in aid of projects strictly private or personal" and that the expenditure benefits the public, if at all, in only a "secondary manner" (20 Wall. at 659).

It is, of course, no answer to this argument that "whatever the Government pays for its typical requirements it of necessity pays to individuals" (Pet. Brief, p. 237). There is a vast and obvious difference between the incidental benefit received in the form of compensation for goods or services furnished the government and the deliberate enhancement of the purchasing power of an individual through grants of money for that express purpose.

The petitioner points out (Brief, pp. 234-236) that certain of the state courts have sustained, as being for a public purpose, appropriations for relief of "group distress".[18] It is a sufficient answer, we submit, that the statute here involved is not a relief measure. The right to benefit payments does not in any way depend upon the plight of the individual farmer, but upon his willingness to submit to the Government's regulations regarding the planting of crops. Relief of physical suffering has historically been regarded as an exception to the general rule that the power to tax and appropriate may not be used in aid of individuals.

No case is cited by the Government in which an expenditure of this character has been sustained by a federal court. *Green* v. *Frazier*, 253 U. S. 233, and *Jones* v. *Portland*, 245 U. S. 217, are plainly distinguishable. The decisions in those cases turned on the fact that the enter-

[18] The authorities cited on page 235 of the Government's brief as illustrative of a more liberal tendency on the part of courts in recent years dealt with measures for the relief of persons suffering from catastrophes such as cyclones and drought, and in those cases the courts were at pains to assimilate the facts justifying the expenditures to cases involving relief of poverty and physical distress. Indeed, in *State ex rel. Cryderman* v. *Wienrich*, 54 Mont. 390, the appropriation was expressly sustained under a constitutional provision authorizing counties to provide for those "who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society."

prises to be supported by taxation were being operated by the respective governments themselves—a state in the one case and a municipality in the other. *Loan Association* v. *Topeka, supra,* was cited in both cases with approval, the Court carefully pointing out in *Green* v. *Frazier* (p. 242) that "This is not a case of undertaking to aid private institutions by public taxation as was the fact in *Citizens' Savings & Loan Association* v. *Topeka,* 20 Wall. 655, 665", and saying in *Jones* v. *Portland,* at p. 221:

> "* * * It is well settled that moneys for other than public purposes cannot be raised by taxation, and that exertion of the taxing power for merely private purposes is beyond the authority of the State. *Citizens' Savings & Loan Association* v. *Topeka,* 20 Wall. 655".[19]

In *Dodge* v. *Mission Township,* 107 Fed. 827, the Circuit Court of Appeals for the Eighth Circuit held invalid a state statute authorizing townships to subscribe for stock in privately owned sugar mills and for that purpose to issue bonds and levy taxes to pay the principal and interest thereof.

An appropriation strikingly similar to the benefit payments here in question was involved in *Miles Planting Co.* v. *Carlisle,* 5 App. D. C. 138. An Act of Congress provided for payment of bounties on the production of sugar, and this was held unconstitutional in a carefully considered opinion as being for a private rather than a public purpose. No appeal was taken from that decision, and, in fact, the Government relied upon it in *United States* v. *Realty Co.,* 163 U. S. 427, as authority for its contention

[19] The *Loan Association* case has been cited by this Court as authority for the same proposition, as recently as last term. See *Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555, 601.

that a later statute providing for payments to sugar producers who had complied with the conditions of the bounty act was likewise invalid.

In both the *Dodge* case and the *Miles Planting Co.* case, *supra*, the ultimate purpose of the expenditures was manifestly to promote the public welfare, and this was strenuously urged. But the courts in both cases adhered to the principle laid down by this Court that a remote or secondary benefit to the public is not sufficient to justify the expenditure of public funds or the raising of funds by taxation.

This principle is, we submit, applicable to state and federal taxation alike. The Government's contention that a determination of Congress regarding the purpose of an appropriation should be less carefully scrutinized by the courts than a similar determination on the part of a state legislature is beside the point. It derives no support, we submit, from the statement in Judge Cooley's treatise on taxation which is quoted in part at pages 230 and 231 of the Government's brief. A reading of that statement in its entirety (1 Cooley, Taxation, 4th ed., Sec. 178) makes it clear that the distinction drawn in respect of the scope of judicial review was between municipal and state taxation, and not between the powers of the Federal Government and those of the States. Thus, after pointing out that a municipal government is one of limited authority, Judge Cooley goes on to say:

> "* * * It is otherwise with the State, which has all the power of taxation not withheld from exercise in the making of the state and federal constitutions, and in support of whose action, consequently, the most liberal intendments are to be made. * * * "

This is to the same effect as the statement, quoted in the petitioner's brief, regarding the breadth of the powers of the Federal Government.

Moreover, such distinction as Judge Cooley draws between the federal and state governments has no bearing on the question whether the scope of judicial review differs in the two cases. He merely points out that there may be "a public purpose as regards the Federal Union, which would not be such as a basis for State taxation", because "the purpose must in every instance pertain to the sovereignty with which the tax originates." Thus—

> "* * * State expenses are not to be provided for by federal taxation, nor federal expenses by state taxation, because in neither case would the taxation be levied by the government upon whose public the burden of the expenses properly rests."

It does not follow that the Congress should be allowed a greater latitude of discretion than would be conceded to a state legislature in determining whether the object of an expenditure will be conducive to the welfare of its particular public. Each legislative body, within its sphere of operations—the nation or the state—must be accorded equally broad powers in deciding what will be in the public interest. As has previously been pointed out, we do not contend that the question whether curtailment of agricultural production and the raising and expenditure of money to that end will promote the welfare of the nation need be reviewed by this Court. For present purposes it may be conceded that the decision of Congress on that question, unless plainly in abuse of its discretionary powers, is not subject to judicial review. The question which we conceive to be a justiciable question is whether the possibility, or even the probability, that disbursement of the proceeds of a levy in aid of

private enterprise will indirectly benefit the general public characterizes and justifies the levy as an exercise of the power to levy taxes. As to this question, we submit, the principles laid down by this Court in *Loan Association* v. *Topeka, supra,* in respect of the constitutional authority of a sovereign state are equally relevant to the constitutional power of the Federal Government.

CONCLUSION

We submit that the decree of the court below should be affirmed.

Respectfully submitted,

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December, 1935.

APPENDIX.

I.

OFFICIAL STATEMENT OF THE WHEAT ADJUSTMENT PLAN

ISSUED BY THE

AGRICULTURAL ADJUSTMENT ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE,

WITH THE APPROVAL OF

THE PRESIDENT

June 16, 1933

PLAN FOR APPLYING THE AGRICULTURAL ADJUSTMENT ACT TO THE 1933, 1934, AND 1935 WHEAT CROPS

The Secretary of Agriculture, Henry A. Wallace, and Administrators George N. Peek and Charles J. Brand of the Agricultural Adjustment Administration, with the approval of the President, announce the following plan of cooperation between the Government and the wheat growers of the United States to bring supply and demand into better balance, and growers' income on the domestic consumption of wheat to the parity intended by the Act:

1

Benefits in consideration of cooperation will be paid annually in 1933, 1934, and 1935, on allotments based on the domestically consumed part of the preceding 3-year average production of each wheat grower who signs a contract to reduce acreage for 1934 and 1935 crops, if required.

2

In order to receive such payments, the grower must cooperate as follows:

(*a*) Agree, if required, to reduce his wheat acreage for 1934 and 1935 by not more than 20 percent of his average acreage during the 3-year base period, and (*b*) sow to wheat in a workmanlike manner the number of acres that, at his average yield for the 3-year base period, should produce the number of bushels allotted to him and on which his payments are based.

3

The allotment of each grower is his proportionate share of the total amount domestically consumed, and bears the same proportion to the total domestic consumption as his average 3-year production bears to the average total 3-year production.

4

On the basis of information already available in the Department of Agriculture, each State will be allotted for the purpose of determining payments that number of bushels of wheat which represents its proportion of the average domestic consumption for the base period. The county allotments, in turn, will be apportioned on the same basis. Within the county the allotments to individual farmers will be made by the county Wheat Production Control Association and these allotments will be published in the county press.

5

Wheat producers in any county who, by signing the agreement, become eligible to receive benefits in consideration of cooperation, shall organize a county Wheat Production Control Association, choosing its director, whose salary and expenses will be withheld pro rata from payments to be made within the county. While the plan, which includes both a contract and a payment offer, is to be made generally to wheat farmers throughout the

United States, it is thought that in counties producing less than 100,000 bushels, possibly 200,000 bushels, of wheat annually, wheat farmers may not feel justified in organizing county Wheat Production Control Associations. Operation of the plan will be decentralized in order to administer it efficiently and satisfactorily. Extension Service agencies will be used wherever available, supplemented by temporary emergency workers appointed to serve in counties where there are no county agents or where additional help is required.

6

Distribute two thirds of the payments about September 15, provided the plan gets under way and is carried through as scheduled. The remaining one third will be paid upon evidence of fulfillment of contract as to acreage planted in the fall of 1933 or spring of 1934. The grower who fails to carry out his acreage agreement forfeits his right to participate in further payments in 1934 and 1935.

7

Collect a processing tax, beginning with the 1933 marketing year, to be proclaimed by the Secretary of Agriculture. Such tax will be the amount provided in the law with such adjustments thereafter as may be necessary to effectuate the purposes of the Act. In fixing the amount of the payments to farmers the Secretary of Agriculture will have due regard to the estimated amount of tax proceeds.

8

Supplementing this plan, every effort will be made to dispose of existing surplus supplies in foreign markets. The Agricultural Adjustment Administration will coop-

erate with existing agencies to facilitate export movement of wheat as authorized by the Act.

9

A study will be made of the practicability of taking out of the market a portion of the supply of types of wheat produced this year in excess of requirements. Any supplies of wheat acquired in this manner might be disposed of through relief agencies such as the American Red Cross.

10

The broad economic purposes of this plan are to bring about a balance between production and effective demand and, in the public interest, to stimulate the buying power of agriculture. This increased buying power should result from distribution of payments among wheat farmers. A tentative estimate indicates that at least $135,000,000 would be distributed among the wheat-producing farmers who sign acreage agreements. It is estimated that the whole plan could be accomplished at an annual administrative cost not to exceed 2 cents per bushel.

11

In general, the plan is intended to obtain for the wheat growers, who will cooperate with the Agricultural Adjustment Administration by agreeing to adjust production, a sum equivalent to the parity price on that portion of their production which is required for domestic consumption. This sum will be made up of two parts: (*a*) The prevailing market price at which the grower sells his wheat, and (*b*) the payment made under the Act. The income of the grower will be independent of the prevailing open market price or of the world price at which the

surplus sells. This is exactly what farmers have been asking for.

The plan permits a free supply-and-demand price for wheat to operate in all markets of the United States. When this open market price and the world price for wheat become adjusted the way will be open for the free export movement of American wheat without detriment to the farmers' income on that portion of their wheat required for the domestic markets.

By adopting this plan the Government of the United States will possess the power to bring about acreage adjustments in 1934 and 1935 to conform to whatever agreement may be reached between wheat exporting nations at the London Conference.

12

The formal proclamation of the Secretary of Agriculture required by the Act, that he has determined that payments are to be made in accordance with this plan, will be issued promptly.

13

In direct charge of the production part of the plan are Chester C. Davis, general crop-production director; M. L. Wilson, production chief for wheat; and A. J. Weaver, senior economic specialist for wheat.

Dated June 16, 1933.

II.

Application for Wheat Allotment Contract and Wheat Allotment Contract for 1933.

W-2 (THIS FORM TO BE SENT TO WASHINGTON)

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

State..... County..... Serial No.....

APPLICATION FOR WHEAT ALLOTMENT CONTRACT

Pursuant to the Agricultural Adjustment Act, approved May 12, 1933, as amended

The Secretary of Agriculture, in accordance with the Agricultural Adjustment Act (hereinafter referred to as the "Act"), proposes to make contracts providing for certain payments (hereinafter defined and referred to as "adjustment payments") to wheat-producing farmers, for the crop years of 1933, 1934, and 1935, who shall agree to make certain reductions in their wheat acreage as set forth herein. Such reductions are for the purpose of furthering the plan of establishing and maintaining a balance between the production and consumption of wheat and the marketing conditions therefor so that the purchasing power of wheat with respect to articles that farmers buy shall be restored to the level of August 1909-July 1914. Farmers who have seeded land to wheat during each or any of the base period years are eligible to make applications to enter into such contracts, with the exception that by reason of prohibitions expressed in title 18, section 204, and title 41, section 22 of the United States Code, no Member of or Delegate to Congress shall be permitted to participate in the benefits of such contracts.

The undersigned (Name and address to be typed or printed)

owner(s) or landlord(s)[1].....
(First name) (Middle initial) (Last name)

.....
(First name) (Middle initial) (Last name)

post-office address(es).....
(Rural route no.) (Box no.) (Post office) (State)

.....
(Rural route no.) (Box no.) (Post office) (State)

tenant .....
(First name) (Middle initial) (Last name)

post-office address.....
(Rural route no.) (Box no.) (Post office) (State)

hereinafter (whether one or more persons) referred to as "the producer" who in the period of production and harvesting of the 1933 wheat crop operated a farm known as the.....farm, consisting of.....acres, situated.....
(Miles and Direction)

from.....on.....Road, in.....Township, of
(Town)

.....County, State of.....

—OR—

described as the.....of section.....township....., range
....., ...from.....in.....County,
(Miles and direction) (Town)

State of....., hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as "the Secretary") for the purpose of reducing the acreage in wheat on the farm mentioned above (hereinafter referred to as "this farm") for the crop years 1934 and 1935 by an amount to be prescribed by the Secretary.

Some of the more important terms used in this application and in the contract which will be entered into if this application is favorably acted upon are defined as follows:

A "crop year" is a period in which a wheat crop is both seeded and harvested, and is designated by that calendar year in which the crop is harvested.

The "average annual acreage" is that annual average (in acres) of the land now in this farm seeded to wheat in the period of crop years (not to exceed five) up to and including 1932, determined by the County Allotment Committee for the county or for this farm, for the purpose of arriving at a representative average acreage and production for this farm, as a basis for determining the farm allotment.

The "contracted acreage" is that number of acres which the producer agrees to take out or keep out of wheat production.

[1]Strike out word which does not apply. If none of the words given is applicable substitute an appropriate word.

The "farm allotment" is that number of bushels of wheat upon which adjustment payments may be made to the producer and is to be determined by the County Allotment Committee on the basis of the average annual production in the base period for this farm as compared with the average annual production in or for the county in the base period.

The "base period" is that consecutive series of crop years prior to and including 1932, not to exceed five, from which by a study of the wheat acreage and production on the land now in this farm a representative average acreage and production can be obtained for the purpose of determining the farm allotment. The base period shall be determined and fixed in a manner which will be explained to the producer by the County Allotment Committee and the base period for this farm will be inserted in this application by that Committee.

The "adjustment payment" is that amount which added to the current average farm price of wheat per bushel (as determined by the Secretary of Agriculture for each crop year) will tend to increase the purchasing power of the producer's farm allotment to that level which wheat had on the average throughout the United States, in terms of commodities which farmers buy, in the period August 1909—July 1914.

The "Wheat Production Control Association" is an organization (formed pursuant to the regulations) of the wheat producers of the county who have signed wheat-allotment contracts and who have associated themselves together for the purpose of cooperating with the Secretary of Agriculture and with the Agricultural Adjustment Administration in making effective the provisions of the Agricultural Adjustment Act.

The "County Allotment Committee" is a committee composed of three members of the county board of directors of the Wheat Production Control Association in the county elected by the board. One of the three members must be the president of the association.

The "wheat parity price" for any stated period is that average farm price, for that period, of wheat per bushel throughout the United States which is equal in purchasing power, in terms of commodities which farmers buy, to that purchasing power which a bushel of wheat had on the average throughout the United States in the period August 1909—July 1914, and shall be determined by the Secretary.

The "adjusted average annual acreage" is an adjustment of the producer's report of his average annual acreage, such adjustment to be made in the manner provided in the regulations.

The "regulations" are regulations heretofore or hereafter prescribed by the Secretary applicable to the subject matter of this application and of the contract provided for herein.

Some of the more important clauses of such contract are summarized as follows:

(1) In no event is the amount of acreage reduction to be prescribed by the Secretary for either of the crop years 1934 or 1935 to be greater than 20 percent of the average annual acreage seeded to wheat on this farm.

(2) As a consideration for the prescribed reduction in acreage for the crop years 1934 and 1935, which shall be the amount to be proclaimed by the Secretary prior to the beginning of each respective marketing year, there shall be made to the producer an adjustment payment in two parts in respect to the wheat crop for the crop year 1933 as computed on the basis of the farm allotment. Such total adjustment payment shall be in an amount not less than 28 cents per bushel of the farm allotment, subject to a deduction for the producer's pro rata share of the administrative expenses in his county. If the current average farm price of wheat per bushel (determined in accordance with the regulations) with respect to the crop year 1934 is below the wheat parity price, then there shall be made to the producer an adjustment payment in respect to the wheat crop for the crop year 1934. If such current average farm price for the crop year 1935 is below the wheat parity price, then there shall be made to the producer an adjustment payment in respect to the wheat crop for the crop year 1935.

(3) The full adjustment payment for the crop year 1933 will be made only if the producer for such crop year seeded an acreage of wheat on the land now in this farm sufficient, at the average yield for the base period, to produce the farm allotment, unless the failure to seed such an acreage is clearly shown to have been due to the producer's regular rotation practice. If for such crop year the seeded wheat acreage on this farm was less than such as would have produced, at the average yield for the base period, the farm allotment and if the failure to seed such an acreage was not due to the producer's regular rotation practice, then the adjustment payment for such crop year will be made only on the amount of wheat which, at the average yield for the base period, would have been produced on the seeded acreage. Such amount will be determined by the County Allotment Committee.

As a basis for determining the farm allotment, the annual average acreage, and the amount of the adjustment payments, there are attached hereto statements by the producer of the acreage and production during the base period for the land now in this farm, and the producer is also to furnish to the County Allotment Committee a statement showing the disposal of the wheat produced on this farm during the base period, evidenced by certificates of purchasers or other evidences of production and sale. All statements made by the producer in this application are matters of public interest and concern and the producer agrees that they may be published in one or more local newspapers.

The producer agrees that all records of past wheat acreages, production, and sales for this farm for the base period, whether in the hands of the producer or of any other person or agency, shall, so far as the producer is able to do so, be made available for inspection by an authorized agent of the Secretary, and the producer expressly waives any right to have such records kept confidential.

The producer agrees to submit any further evidence concerning this application which may be requested by the County Allotment Committee.

The producer hereby applies for membership in the Wheat Production Control Association in his county. When this application is hereinbelow certified by the County Allotment Committee and a wheat allotment contract is entered into between the Secretary and the producer, then under the terms of such contract the producer

will be bound by the articles, bylaws, rules, and regulations of such association and will be bound to bear his pro rata share of the administration expenses of such Association.

This application and such contract, filed in the office of the Secretary of Agriculture, shall be subject to the regulations of the Secretary.

1933 crop acreage

Crop	Acres seeded or planted	Crop	Acres seeded or planted	Crop	Acres seeded or planted
Winter wheat (1)		Oats (5)		Cotton (9)	
Spring wheat (2)		Barley (6)		Potatoes (10)	
Durum (3)		Rye (7)		Acres in tame hay (11)	
Corn (4)		Tobacco (8)		Acres fallowed or idle (12)	

WHEAT acreage and production for the land now in this farm including shares of both owner or landowner and tenant

(This application cannot be accepted unless the information called for in the spaces below is fully set forth for the base period years)

Year	Acres seeded A.	Acres harvested B.	Total production, bushels C.	Adjusted production bushels [2] D.
1928 [2]				
1929 [2]				

[2] The years 1928 and 1929 are to be filled in only if the producer is eligible for a 4- or 5-year base period as above provided.

1930				
1931				
1932				
Total				
Average				

[3] Producer is not to fill in this column.

If this farm is operated by a tenant—

1. What was the share basis of the 1933 lease?

owner or[4] landlord .....

tenant[4] .....

2. When does the lease with the present tenant terminate? .....

If this farm is operated in any other manner than as set forth above, what was the basis of such operation? .....

The statements contained herein are true to the best of my (our) knowledge and belief and shall become a part of the wheat allotment contract which may be offered.

Witness: .....

(Signature)

..... } owner(s) or[4] landlord(s)

(Signature)

..... (Signature)

..... (Date), 1933.

Witness: .....

(Signature)

..... (Signature), tenant.

..... (Date), 1933.

NOTE.—Only the signature of the tenant is necessary on the application where the owner or landlord or a duly authorized agent of the owner or landlord is not available for immediately obtaining his signature. But before a contract will be executed by the Secretary, a duplicate copy of the application must be signed by the owner or landlord or his duly authorized agent.

[4] Strike out word which does not apply. If none of the words given is applicable, substitute an appropriate word.

(PRODUCER IS NOT TO WRITE ANYTHING BELOW THIS LINE)

Community Committee Certification of Application

The documents listed below have been verified and are attached to the form of this application which is to be retained by the County Allotment Committee:[5]

- ☐ 1. Sketch map of this farm.
- ☐ 2. Statement of disposal of 1928, 1929, 1930, 1931, and 1932 wheat crops.
- ☐ 3. Thresherman's certificates for 1928, 1929, 1930, 1931, and 1932 wheat crops.
- ☐ 4. Certificates of purchase of wheat 1928, 1929, 1930, 1931, and 1932 crops.

We hereby certify that we are personally familiar with the farm covered by this application and that the statements in the application and in the above-listed documents as given, pertaining to the base period and the crop year 1933, are correct to the best of our knowledge and belief.

If not correct, indicate in what way or ways.....

.....

....., 1933.
(Date)

Signed .....

.....

.....
(Community Committee)

County Allotment Committee Certification of Application

We hereby certify that we have considered the above application and the report of certification of the community committee and have determined for this farm the following:

1. Base period ..... years.
2. Average annual acreage seeded to wheat (based on crop years 1928, 1929, 1930, 1931, and 1932[6]) ..... acres.
3. Average annual production of wheat (based on crop years 1928, 1929, 1930, 1931, and 1932[6]) ..... bushels.
4. Farm allotment ..... bushels.
5. Division of adjustment payments, in accordance with present share lease (if any):

.....percent to....., ... as landlord[7]
(Name) (Address)

.....percent to....., ... as tenant[7]
(Name) (Address)

and recommend that the Secretary of Agriculture enter into a wheat allotment contract with the producer on the basis of such facts.

....., 1933.
(Date)

Signed .....

.....

.....
(County Allotment Committee)

Any intentional misrepresentation of fact made in this application for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.

[5]Indicate by check in box the number of any document which has *not* been attached hereto and strike out years for which no documents are attached.
[6]Strike out years not applicable.
[7]Strike out word which does not apply. If none of the words given is applicable substitute an appropriate word.

U. S. GOVERNMENT PRINTING OFFICE: 1933 8—8338

W-8

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

STATE..... COUNTY..... SERIAL NO.....

MAP OF FARM

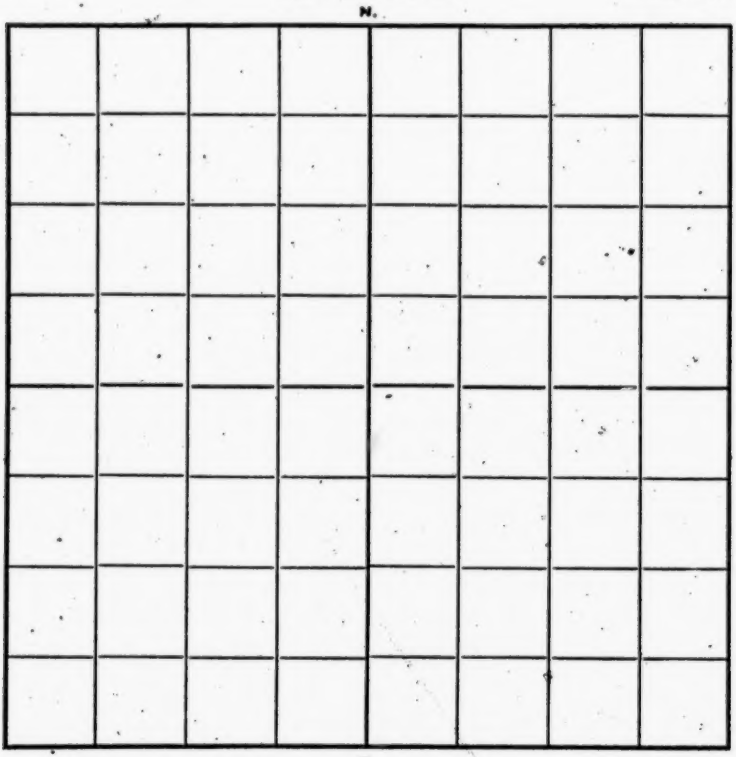
For use in public-land states

Draw or have agent draw a complete map of the land you are farming in 1933 which is covered by this application.

1. Show size and shape of each field in farm.
2. Write in the crop and acreage for each field.
3. Show the location of the house, barns, and road leading to the farm.
4. Show the location and acreage of all woods and pasture lands.
5. Total crop land, ...acres.
6. Total size of farm, ...acres.
7. This map must be complete for purposes of certification in 1933, 1934, and 1935.

Four (4) Sections 8—8335 a

N.



W. E.

S.

This farm is described as the.....of section.....; the.....of section .....; the.....of section.....; the.....of section....., township..... ....., range.....

U. S. GOVERNMENT PRINTING OFFICE 1933

W-8a

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

STATE COUNTY SERIAL NO.....

MAP OF FARM

For use in non-public-land states

Draw or have agent draw a complete map of the land you are farming in 1933 which is covered by this application.

1. Show size and shape of each field in the farm.
2. Write in crop acreage for each field.
3. Show the location of the house, barns, and road leading to the farm.
4. Show the location of all woods and pasture lands.
5. Total crop land, ...acres.
6. Total size of farm.....acres.
7. This map must be complete for purposes of certification in 1933, 1934, and 1935.

8—8335 e

N.

W. E.

S.

This farm is described as.....from.....
(Miles and directions)

on.....Road, in.....Township,

of.....County, State of.....

W-9 (THIS FORM TO BE SENT TO WASHINGTON)

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

State..... County..... Serial No.....

WHEAT ALLOTMENT CONTRACT

Pursuant to the Agricultural Adjustment Act, approved May 12, 1933, as amended

(Name and address to be typed or printed)

The undersigned,

owner(s) or[1] landlord(s), ...
(First name) (Middle initial) (Last name)

.....
(First name) (Middle initial) (Last name)

post-office address(es).....
(Rural route no.) (Box no.) (Post office) (State)

.....and
(Rural route no.) (Box no.) (Post office) (State)

tenant .....
(First name) (Middle initial) (Last name)

post-office address.....
(Rural route no.) (Box no.) (Post office) (State)

hereinafter (whether one or more persons) referred to as "the producer", who during the period of production and harvesting of the 1933 wheat crop operated a farm which is described in the application for wheat allotment contract heretofore executed by the producer and certified by the County Allotment Committee (hereinafter referred to as "the application"), hereby contract(s) with the Secretary of Agriculture, upon the terms and conditions hereinafter set forth and subject to the regulations (which shall be deemed to be part of the terms and conditions of this contract) heretofore or hereafter prescribed by the Secretary pursuant to the above Act.

For the purposes of this contract the terms "Secretary", "regulations", "Act", "average annual acreage", "base period", "farm allotment", "wheat parity price", "County Allotment Committee", "Wheat Production Control Association", and "crop year" shall have, respectively, the meanings assigned to them in the application.

Acceptance by the Secretary shall cause this instrument to become a binding contract between the producer and the Secretary.[2]

1. The acreage to be seeded to wheat for each of the crop years 1934 and 1935 on the above-mentioned farm (hereinafter referred to as "this farm") shall be reduced below the average annual acreage (as fixed in the application) by an amount to be prescribed by the Secretary, but in no event shall such amount of reduction to be prescribed by the Secretary exceed 20 percent of the average annual acreage.[3] Should an international agreement for the reduction of wheat acreage be entered into by the United States, then the acreage reduction specified in such international agreement shall be considered in determining (in such manner as the Secretary by the regulations shall prescribe) the reduction up to such 20 percent, to be thereafter prescribed for this farm. The land taken out or kept out of production pursuant to this contract for the crop year 1934 shall be referred to hereinafter as "the contracted acreage of 1934", and the land so taken out or kept out of production for the crop year 1935 shall be referred to hereinafter as "the contracted acreage of 1935."

In the event that no reduction is prescribed by the Secretary for the 1934 crop year and/or for the 1935 crop year, the acreage seeded to wheat on this farm for such year or years shall not exceed the average annual acreage.

2. There shall be seeded to wheat on this farm for each of the crop years 1934 and 1935 an acreage sufficient, at the average yield during the base period[3] (as fixed in the application), to produce the farm allotment[3] (as fixed in the application) for this farm, i.e., ...acres, which at the average yield for the base period will produce.....bushels, which is the farm allotment for this farm.

3. On the acreage which under the terms of this contract may be seeded to wheat, the methods of production employed shall be such as conform to accepted practices for wheat growing in the locality.

4. The contracted acreage of 1934 and 1935 shall not include land which is waste, gullied, or eroded, and shall be the average of that on which wheat is ordinarily seeded on this farm.

---

[1] Strike out word which does not apply. If none of the words given is applicable, substitute an appropriate word.

[2] By reason of the prohibitions contained in title 18, sec. 204, and title 41, sec. 22, of the United States Code no Member of or Delegate to Congress shall be admitted to any share or part of this contract or to any benefit to arise thereunder.

[3] The producer agrees that the base period, the average annual acreage, and the farm allotment are as fixed by the County Allotment Committee in the application, viz: Base period: Years 19..... to 19....., inclusive. Average annual acreage: ..... acres. Farm allotment: .....bushels.

5. The contracted acreage of 1934 and 1935 shall be posted by the producer in such manner as the Secretary or his authorized agent may direct, or may be posted by an authorized agent of the Secretary.

6. The contracted acreage of 1934 and 1935 shall not be used for the production of any nationally produced agricultural product for sale, but may be used as follows: Summer fallowed; planted to soil-improving or erosion-preventing crops, or to food crops for home consumption on this farm, or to feed crops for the production of livestock (or livestock products) for home consumption or use on this farm.

7. In areas where commercial fertilizer is used, such fertilizer shall not be applied on that portion of this farm which under the terms of this contract may be seeded to wheat for the crop years 1934 and 1935 in an amount per acre in excess of the amount of commercial fertilizer used per acre in the base period on land seeded to wheat on this farm.

8. If any farm other than the one covered by this contract is owned or operated by the producer in 1934 or 1935, such farm shall not be used for the purpose of increasing the wheat acreage thereon in any amount to offset the required reduction on this farm, and a breach of this condition shall be a ground for termination of this contract by the Secretary, and the discontinuance of any further payments hereunder.

9. All undertakings herein of the producer are covenants which shall run with the land and shall be fully obligatory upon all future purchasers, lessees, tenants, and encumbrancers of this farm or any part thereof. In the event that any portion of this farm is sold or otherwise disposed of, the Secretary or his authorized agent shall in writing determine an average annual acreage and a farm allotment for such portion and a new average annual acreage and farm allotment for the remainder of this farm. Such determination shall be final and conclusive. If requested by the Secretary or his authorized agent, the producer shall post on this farm in a conspicuous place, or permit an authorized agent of the Secretary so to post, a notice to be furnished by the Secretary or his authorized agent stating that this farm is subject to the terms of this contract and referring to the matters contained above in this paragraph. The producer shall notify all purchasers, lessees, tenants, or encumbrancers of this farm, or any part thereof, of such matters and shall immediately notify in writing the Secretary and the County Allotment Committee, giving full details, of any change in the legal relationship to this farm of any party herein described as the producer (whether owner, landlord, or tenant).

10. For the purposes of supervision and investigation of the performance by the producer of the terms hereof, the Secretary or his authorized agent shall at all reasonable times have access to this farm and the producer shall keep and make available from time to time for inspection by the Secretary or his authorized agent such records and information relating to this farm as may be requested by the Secretary or his authorized agent.

11. All records of past wheat acreages, production, and sales for this farm for the base period, whether in the hands of the producer or of any other person or agency, shall, so far as the producer is able to do so, be made available for inspection by an authorized agent of the Secretary, and the producer expressly waives any right to have such records kept confidential.

12. (*a*) If this farm is at any time during the existence of this contract operated by a tenant under a cash lease, he shall be considered the producer for the duration of such lease and he shall be entitled to adjustment payments with respect to each entire crop year if his lease exists during that portion of such crop year in which the wheat crop for such year was produced and harvested on this farm and if he is a party to this contract or becomes a party to this contract in the manner hereinafter provided in subparagraph (*f*) of this paragraph (12). The existence and duration of any such lease shall, for the purposes of this contract, be finally and conclusively determined by the County Allotment Committee.

(*b*) If this farm was operated by a share tenant during the period of the production and harvesting of the 1933 crop on this farm, such tenant shall receive his proportion of the adjustment payments for the crop year 1933 as set forth in the footnote hereto.*

(*c*) If this farm is operated by a share tenant during that portion of the crop year 1934 in which the wheat crop for such year is produced and harvested on this farm, such tenant shall receive that proportion of the adjustment payments for said entire crop year fixed in the footnote to subsection (*b*) of this paragraph 12 provided that this farm was, during the period of the production and harvesting of the 1933 crop, operated under a share lease, and in the event this farm was not so operated during such period said share tenant shall receive such proportion of the adjustment payments for the crop year 1934 as may be fixed by the County Allotment Committee, based upon the share lease or leases under which this farm was operated during the base period, and in the event that there was no share lease during the base period said share tenant shall receive such proportion of the adjustment payments for the crop year 1934 as may be agreed upon between him and his landlord and is certified to by the County Allotment Committee.

---

*The producer represents that the division of adjustment payments, in accordance with the present share lease, which expires....., fixed in the application, is as follows:

.....percent to....., ...,as landlord,
(Name) (Address)

.....percent to....., ..., as tenant.
(Name) (Address)

(*d*) If this farm is operated by a share tenant during that portion of the crop year 1935 in which the wheat crop for such year is produced and harvested on this farm, such tenant shall receive that proportion of the adjustment payments for said entire crop year fixed in the footnote to subsection (*b*) of this paragraph 12 provided that this farm was, during the period of the production and harvesting of the 1933 crop, operated under a share lease, and in the event this farm was not so operated during such period said share tenant shall receive such proportion of the adjustment payments for the crop year 1935 as may be fixed by the County Allotment Committee, based upon the share lease or leases under which this farm was operated during the base period, and in the event that there was no share lease during the base period said share tenant shall receive such proportion of the adjustment payments for the crop year 1935 as may be agreed upon between him and his landlord and is certified to by the County Allotment Committee.

(*e*) At any time a party hereto shall cease to have any legal relation to this farm, he shall thereupon cease to be a party hereto and (subject, however, to the provisions set forth in this paragraph (12)) his right to all adjustment payments thereafter shall cease.

(*f*) Any person who has not executed this contract, or any person who, having executed this contract, changes his legal relation to this farm, and who may under the terms of this paragraph be entitled to any adjustment payment, or part thereof, may, with the approval of the County Allotment Committee, become or remain, as the case may be, a party to this contract by executing a form therefor prescribed by the Secretary, and shall thereafter be entitled, as provided in said form, to adjustment payments, or parts thereof.

13. If the producer is indebted to the United States in any amount for obligations due at the time adjustment payments are to be made to the producer under this contract, it is understood that such payments may be applied to the reduction or full payment of such indebtedness, and the balance, if any, then paid to the producer.

14. There shall be deducted from the adjustment payments to be made under this contract a sum sufficient to defray the producer's pro rata share of the administrative costs of the Wheat Production Control Association in his county and the producer expressly authorizes the Secretary or the Secretary's authorized agent to make such deductions. Such pro rata share shall be computed on the basis of the number of bushels in the farm allotment.

15. The statements contained herein are true to the best of the knowledge and belief of the producer. The statements and agreements by the producer set forth in or attached to the application and any further statements called for herein shall be agreements, representations, and conditions upon which the Secretary will rely in entering into this contract and shall be continuing agreements, representations, and conditions which are by this paragraph incorporated into and made a part of this contract. If the Secretary determines (and his determination shall be final and bind the other parties hereto) that there has been a material misstatement in any of such statements or any noncompliance by the producer with any such agreements or conditions or with any term hereof or with any of the regulations, he may terminate this contract and thereafter no further payments shall be made hereunder, and any payments theretofore made shall be refunded to the Secretary by the producer and shall constitute, until so refunded, a lien on future wheat crops on this farm. In the event that any person described herein as the producer shall (except as may be provided by regulations) sell or trade in any flour obtained in exchange for or processed from wheat produced on this farm and in respect of which no processing tax has been paid, such person shall thereupon cease to be a party to this contract and shall not thereafter be entitled to any payments hereunder and shall refund to the Secretary any payments hereunder theretofore received by such person.

16. The producer will not sell or assign, in whole or in part, this contract or his right to or claim for adjustment payments under this contract, and will not execute any power of attorney to collect such adjustment payments or to order that any such payments be made. Any such sale, assignment, order, or power of attorney shall be null and void.

17. As consideration for the prescribed reduction for the crop years 1934 and 1935, there shall be made to the producer (subject to the terms of paragraph 12) an adjustment payment in two parts in respect of the 1933 wheat crop to be based upon the farm allotment for this farm. The first payment shall be in an amount equal to 20 cents per bushel of such allotment and shall be made on or after September 15, 1933. The second payment shall be in an amount equal to not less than 8 cents nor more than 10 cents per bushel of such allotment and shall be made not earlier than June 1, 1934, after presentation to the Secretary (in accordance with the regulations) of proof of compliance by the producer with the terms of this contract relating to wheat acreage reduction for 1934; provided, however, that the full adjustment payment for the crop year 1933 will be made only if the producer for such crop year seeded an acreage of wheat on the land now in this farm sufficient, at the average yield for the base period, to produce the farm allotment, unless the failure to seed such an acreage is clearly shown to have been due to the producer's regular rotation practice. If for such crop year the seeded wheat acreage on this farm was less than such as would have produced the farm allotment at the average yield for the base period and if the failure to seed such acreage was not due to the producer's regular rotation practice, then the adjustment payment for such crop year will be made only on the amount of wheat which, at the average yield for the base period, would have been produced on the seeded acreage, and such amount will be determined by the County Allotment Committee.

18. If the current average farm price of wheat per bushel (as determined in accordance with the regulations) with respect to the crop year 1934 is below the wheat parity price, there shall be made to the producer (subject to the terms of paragraph 12) an adjustment payment, in two installments, in respect to the wheat crop for the year 1934. Such total adjustment payment shall be in an amount

determined and proclaimed by the Secretary prior to the beginning of the marketing year 1934. The adjustment payment for the crop year 1934 shall be such as will tend to give the producer the wheat parity price for his farm allotment. The first of the two installments of said adjustment payment shall be in an amount equal to approximately two-thirds of the total adjustment payment for the crop year 1934 and shall be made between July 1 and September 15, 1934; the second installment shall be made on presentation to the Secretary of proof of compliance (in the manner prescribed by the regulations) by the producer with the terms of this contract, but such payment shall not be made until a date after which wheat can no longer be seeded in the locality to produce a crop for the year 1935.

19. If the current average farm price of wheat per bushel (as determined in accordance with the regulations) with respect to the crop year 1935 is below the wheat parity price, there shall be made to the producer (subject to the terms of paragraph 12) an adjustment payment, in two installments, in respect to the wheat crop for the year 1935. Such total adjustment payment shall be in an amount determined and proclaimed by the Secretary prior to the beginning of the marketing year 1935. The adjustment payment for the crop year 1935 shall be such as will tend to give the producer the wheat parity price for his farm allotment. The first of the two installments of said adjustment payment shall be in an amount equal to approximately two-thirds of the total adjustment payment for the crop year 1935 and shall be made between July 1 and September 15, 1935; the second installment shall be made on presentation to the Secretary of proof of compliance (in the manner prescribed by the regulations) by the producer with the terms of this contract, but in any event such payment shall not be made earlier than November 1, 1935.

In witness whereof the undersigned { has / have }[5] executed this contract:

.....
(Signature)
.....
(Signature)
} owner(s) or landlord(s)[5]

Witness:.....
(Signature)

....., 1933
(Date)

....., tenant
(Signature)

Witness:.....
(Signature)

....., 1933
(Date)

Affirmation

The above named....., ...,

and....., being personally known to me, appeared before me and swore to the truth (to the best of { his / their }[5] knowledge and belief) of the statements contained in the above contract and in the application (together with its accompanying documents) this.....day of....., 1933.

....., *Member Community Committee*

(for.....Community).

Acceptance by Secretary

In consideration of and in reliance upon the representations and agreements above set forth or incorporated above in this contract, this contract is hereby accepted in accordance with the terms thereof, this.....day of..... 1933.

HENRY A. WALLACE,
Secretary of Agriculture
(for and on behalf of the United States),

By.....

[5]Strike out word not applicable.

8—8333 U. S. GOVERNMENT PRINTING OFFICE 1933

III.

Application for Wheat Adjustment Contract for 1936-1939 and Wheat Adjustment Contract for 1936-1939.

Wheat-201
U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Division of Grains—Wheat Section

(Temporary Serial No.) | (State and County Code and Contract Serial No.)

APPLICATION FOR WHEAT ADJUSTMENT CONTRACT FOR 1936-1939

(Only one copy of this form need be made)

Section I.—IDENTIFICATION

1. Name of 1936 operator ..... Address .....
2. Name of landlord ..... Address .....
3. Name of landlord's agent (if any) ..... Address .....

The undersigned operator/s and landlord/s (if any) of the farm

4. known as the ..... farm, consisting of ..... acres, situated ..... (Miles and direction)
5. from ..... on ..... road, in ..... Township (Town)
of ..... County,
6. State of ..... —OR—
7. described as the ..... of Section ....., Township (Block) ....., Range (Certificate) .....,
8. ..... from ....., in ..... County (Miles and direction) (Town)

State of ....., in connection with, and in order to induce the Secretary of Agriculture to accept their offer to enter into a Wheat Adjustment Contract for 1936-1939, makes the statements and representations set forth herein as a basis for determining the correct basic figures with respect to the farm to be covered by such contract, as a basis for performance of such contract and the making of adjustment payments thereunder.

9. Was this farm or any part thereof covered by a 1933-1935 Wheat Allotment Contract? (Yes or No) ..... If so, give serial number/s .....; total acreage in farm .....; number of years in base period .....; average annual wheat acreage .....; average annual wheat production .....

Section II.—WHEAT HISTORY OF THE FARM, 1928-1932

CROP OF	OPERATOR'S FIGURES			Calculated yield per seeded acre	COUNTY COMMITTEE'S FIGURES		(To be used by tabulating clerk after receipt of special instructions)			
	Acres seeded	Acres harvested	Total production		Corrected acreage	Corrected production				
	A	B	C	D	E	F	G	H	I	J
10. 1928										
11. 1929										
The years 1928 and 1929 are to be filled in only if the producer is eligible for a 4-year or 5-year base period										
12. 1930										
13. 1931										
14. 1932										
15. TOTAL										
16. AVERAGE										

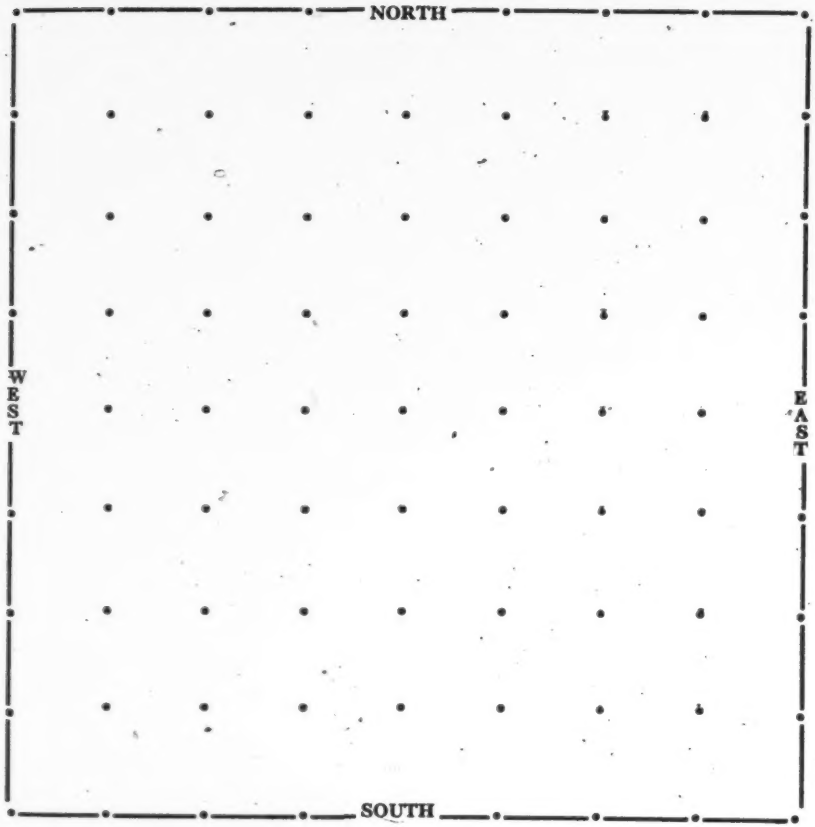
Section III.—WHEAT HISTORY OF THE FARM, 1933-1935

17. 1933					X X X	X X X				
18. 1934					X X X	X X X				
19. 1935					X X X	X X X				

8—9207

Section IV.—PLAT OF TRACT—1935

(These dots will help in drawing in the boundaries of the land and the outline of the fields)



Show the location of buildings, and indicate by a double line public roads adjoining or cutting through the land, private roads and lanes, and open ditches or streams running through the land.

Show size and shape of each field and write on each field the name and acreage of crop planted for harvest in 1935. Also show in parentheses the name of crop in each field planted for harvest in 1934. Designate also noncrop fields as "pasture", "idle", "fallow", "waste", "woods", etc. In showing crops on the plat keep in mind that one purpose of this plat is to show the area seeded to wheat and rye for grain and original seedings of such other crops as were not planted on abandoned wheat and rye land.

Section V.—TOTAL CROP ACREAGE

(To be computed in county office from column C, section VI)

	Acres	Acres
20. Total acreage in farm	x x x	
21. Land in roads, lanes, etc.		
22. Land in woods, waste, etc.		
23. Land in permanent pasture		
24. Wild hay		
25. Subtotal, items 21 to 24, incl.	x x x	
26. Total crop acreage (20) minus (25)	x x x	

Section VI.—FARM ACREAGES

	Operator's Figures		Committee's corrected acres	To be used by tabulating clerk after receipt of special instructions		
	Acres in 1935	Acres in 1934				
	A	B	C	D	E	F
27. Total acreage in farm						
28. Land in roads, lanes, building lots						
29. Land in woods, waste, etc.						
30. Land in permanent pasture						
31. Land in temporary or rotation pasture						
32. Idle crop land (include fallow)						
33. Wild hay						
34. All tame hay (except alfalfa)						
35. Alfalfa						
36.						
	Acres seeded for harvest in 1935	Acres seeded for harvest in 1934	Committee's corrected 1935 acres			
37. Soybeans and cowpeas grown alone						
38. Sweet sorghum and sugarcane						
39. Grain sorghum (Kafir, Milo, etc.)						
40. Corn for all purposes						
41. Rye						
42. Winter wheat						
43. Spring wheat (include durum)						
44. Oats (include oats fed unthreshed)						
45. Barley						
46. Tobacco or flax						
47. Cotton						
48. Potatoes						
49. Sweetpotatoes						
50. All crops not listed above						
51.						

Describe below any special conditions such as double cropping; seedings on abandoned winter wheat and rye land, seedings of mixed grain crops, such as wheat and oats, wheat and flax, etc.

Section VII.—OTHER COMMODITY CONTRACTS

If this farm or any part thereof was covered by a contract in 1935 for a commodity other than wheat, fill out lines 52, 53, and/or 54 below:

Other contract (indicate commodity)	Serial number	Base acres
52.		
53.		
54.		

Section VIII.—BASE PERIOD AND PRODUCTION BASIS

	Number of years in base period	PRODUCTION BASIS (Put X in proper space)	
		Historical	Estimated yield
	A	B	C
55. Operator's requested			
56. Committee's approved			

Section IX.—SUMMARY

	Approved to meet contract quota	Approved pursuant to ruling No. 111	Approved
	A	B	C
57. Total acres in farm	XXX	XXX	
58. Total crop acreage	XXX	XXX	
59. Average annual wheat acreage			
60. Average annual wheat production			XXX
61. Farm allotment	XXX	XXX	
61a. Normal acreage, sect. 8 of Contract	XXX	XXX	

Section X.—BASE WHEAT ACREAGE 1936-1939

	Years	Operator's requested	Committee's approved
		A	B
62.	1936		
63.	1937		
64.	1938		
65.	1939		
66.	TOTAL		
67.	AVERAGE		

Section XI.—TENURE AND DIVISION OF PAYMENT

	NAME OF OPERATOR OF THIS FARM FOR THE CROP YEAR—	Operator's share of wheat crop (percent)
	A	B
68.	1930	
69.	1931	
70.	1932	
71.	1933	
72.	1934	
73.	1935	

		Relationship to farm *	Share of wheat crop (percent)	Committee's approved division of adjustment payment (percent)
		A	B	C
74.	1936 Operator			
75.	1936 Landlord			

* Indicate whether party is owner, cash tenant, fixed-commodity-rent tenant, share-tenant, or tenant on combined share and cash or fixed-commodity-rent basis.

76. If this farm is operated under lease, indicate whether lease is written or verbal .....

Termination date of lease .....

Section XII.—BENEFICIARIES AND SIGNATURES

77. .....
(Name and address of beneficiary named by operator pursuant to section 12c of the Contract)

78. Date....., 193 ....
(Signature of witness) (Signature of operator)

79. .....
(Name and address of beneficiary named by landlord pursuant to section 12c of the Contract)

80. Date....., 193 ....
(Signature of witness) (Signature of landlord)

81. Date....., 193 Certified by .....

U. S. Government Printing Office 8—9207

Wheat 205
U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Division of Grains—Wheat Section

WHEAT ADJUSTMENT CONTRACT FOR 1936-1939

(Pursuant to and in order to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended)

PART I.—GENERAL PROVISIONS

SECTION 1. *Offer of Contract Signer.*—The undersigned operator/s (and landlord/s if any) of the farm described in Part V of this instrument (each of whom, whether operator or landlord, is referred to hereinafter as the "contract signer") hereby offer/s to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions set forth in this Wheat Adjustment Contract (hereinafter referred to as the "contract").

Any and all administrative rulings and regulations heretofore or hereafter prescribed or approved by the Secretary relating to Wheat Adjustment Contracts (hereinafter referred to as "Rulings") are and shall be a part of the terms and conditions of this contract and shall be binding upon the contract signer as fully and effectively as if set forth herein in full.

The placing of the Secretary's acceptance of this offer in the regular course of mailing shall cause this offer to become a binding contract between the contract signer and the Secretary.

SECTION 2. *Period of Contract.*—This contract shall be effective for the crop years 1936, 1937, 1938, and 1939 (hereinafter referred to as the "contract years") subject, however, to termination pursuant to either section 12*c* or 14*b*, or to termination or suspension as follows:

a. Subject to Rulings applicable to contract signers having established crop-rotation practices, the contract signer may terminate this contract at the end of the contract year 1937, by executing and submitting to the Secretary, through the office of the Wheat Production Control Association of the county or district in which the farm or principal part thereof is located, not later than June 1 of such year, a notice of termination on a prescribed form.

b. The Secretary may suspend the operation of this contract with respect to any contract year by proclamation made not later than July 1 of the next preceding contract year. Unless terminated by the contract signer or the Secretary pursuant to section 12*c*, 14*b*, 2*a*, or 2*c*, or unless further suspended by the Secretary in accordance with this section 2*b*, this contract shall remain in full force and effect during the remainder of the period of the contract following the year or years with respect to which it may be suspended.

c. The Secretary may terminate this contract at the end of any contract year by proclamation made not later than July 1 of such year.

If this contract is terminated or suspended pursuant to the provisions of this section 2 the contract signer shall not be entitled to any payment under this contract for any contract year which succeeds the effective date of such termination or during which the contract is suspended, but, subject to applicable Rulings, upon proof satisfactory to the Secretary of full performance of all the terms and conditions of this contract with respect to any contract year which precedes the effective date of such termination or suspension, shall be entitled to receive, subject to the provisions of section 14 and applicable Rulings, payment for each such preceding contract year.

SECTION 3. *Membership in Association.*—The contract signer hereby applies for membership in the Wheat Production Control Association of the county or district in which the principal part of the farm covered by this contract is located (hereinafter referred to as the "Association") and agrees to be bound by the Articles, Bylaws, Rules, and Regulations of such Association.

PART II.—PERFORMANCE BY CONTRACT SIGNER.

The Contract Signer Agrees:

SECTION 4. *Acreage Adjustment.*—To adjust the acreage seeded to wheat on the farms described in Part V of this contract (hereinafter referred to as "this farm") in each of the contract years, with reference to the base wheat acreage for that year, by such amount as the Secretary may prescribe for such year, provided that the Secretary shall not prescribe for any contract year an adjustment in excess of 25 percent of the base wheat acreage for that year.

SECTION 5. *Maximum Acreage.*—To limit the acreage seeded to wheat on this farm, for each of the contract years for which the Secretary prescribes no adjustment for this farm, to an acreage not greater than the base wheat acreage for that year.

SECTION 6. *Minimum Acreage.*—To seed to wheat on this farm in a workmanlike manner for each of the contract years an acreage equal to not less than 54 percent of the base wheat acreage for that year.

SECTION 7. *Control of Other Farms.*—That if any farm other than this farm is owned, operated, or controlled by the contract signer in any of the contract years, the wheat acreage on such other farm or farms shall be limited in each such year to an amount which will assure that any reduction for such year on this farm will not be offset in whole or in part by any increase in the acreage seeded to wheat on such other farm or farms.

SECTION 8. *Use of Adjusted Acreage and Other Land.*—To use on this farm in each contract year in which the contract is operative, for soil improving or erosion preventing crops, pasture, fallow, forest trees, and such other purposes as the Secretary may prescribe, an acreage not less than the normal acreage devoted to such uses on this farm plus an acreage equal to the total of the adjusted acreage under this and all other contracts with the Secretary with respect to this farm.

SECTION 9. *Assignments.*—

a. Not to sell, transfer, pledge, or assign, in whole or in part, this contract or the right to or claim for any payment hereunder, nor to execute any power of attorney to collect such payment or any order that any such payment be made to any other person.

b. Not to make, before receipt by the contract signer of such payment, any agreement to pay to any other person, or to apply for the benefit of any other person, any payment hereunder or any amount measured thereby.

c. That any such sale, transfer, pledge, assignment, power of attorney, order to pay, or agreement shall be null and void.

SECTION 10. *Access to Farm and Records.*—To permit the Secretary or his authorized agent (including, as used in this section, members of Committees of the Association), for the purposes of investigating the accuracy of the representations made in and in connection with this contract and the performance by the contract signer of the terms and conditions of this contract, to enter this farm (and any other land owned, operated, or controlled by the contract signer) at any reasonable time in order to measure the acreage or determine the production of any agricultural commodity to which this contract is applicable, and to examine any records (regardless of where located and whether in the hands of the contract signer or of any other person or agency; and the contract signer hereby authorizes any such person or agency to permit such examination) pertaining to this farm or to the acreage, production, or sale by the contract signer of any such commodity, and agrees to furnish such information relating to this farm as may be requested by the Secretary or such authorized agent.

SECTION 11. *Schemes or Devices to Defeat Purposes of Act. Relations between Parties to Contract and Change of Legal Relation.*—Not to employ any scheme or device of any sort whatever, the effect of which would be (1) to defeat or impede the effectuation of the purposes of the Act; or (2) to deprive any other party to this contract, or any person entitled under the terms of this contract or applicable Rulings to be a party to this contract, of that share of the adjustment payments or of any other right under this contract to which such person would normally be entitled for any of the contract years. The contract signer represents that no such scheme or device has been employed or adopted in contemplation of the execution of this contract, and further represents that every landlord and/or operator who in such capacity is entitled under any existing lease, contract, or agreement to receive any share of the wheat crop produced on this farm in the contract year 1936, is named as a party to and has executed this contract and that the relation of each such party to the farm and the respective share (determined according to Rulings) of each such party in the adjustment payments for the contract year 1936 are correctly designated in Part VII of this contract.

All payments made for any of the contract years shall be made to the contract signer/s in the proportions stipulated in Part VII hereof unless and until it is established, on an approved form accepted by the Secretary or his authorized agent, that a change has occurred in the legal relation of the parties to this contract, as a result of which, under the terms of this contract and applicable Rulings, one or more other persons have become eligible to become parties to this contract and to receive all or a share of such payments, or that the parties hereto have become entitled to receive shares of such payments different from those stipulated in Part VII of this contract.

Subject to the Rulings, whenever the contract signer during any contract year ceases to have any legal relation to this farm as operator or landlord all his right to any further payments under this contract shall immediately cease.

PART III.—PERFORMANCE BY THE SECRETARY

The Secretary, for and on Behalf of the United States, Agrees:

SECTION 12. *Adjustment Payments.*—As consideration for complete performance by the contract signer/s of all the terms and conditions of this contract, and upon receiving such proof of compliance with the terms and conditions of this contract as the Secretary may require, to make the following payments for the benefit of the contract signer/s:

a. Amount of Payments.—The total adjustment payment for each contract year during which this contract is operative shall be made in two installments computed on the basis of the number of bushels in the farm allotment for this farm. The first installment shall be made at a rate per bushel equal to approximately two-thirds (2/3) of the difference between the average farm price and the parity price of wheat, as of a date, prior to July 1 of the contract year with respect to which the payment is made, to be determined by the Secretary. The second installment shall be at such rate as the Secretary determines will tend to assure the contract signer/s of a total adjustment payment for such year equal to the difference between the amount which would be received for the number of bushels of wheat in the farm allotment at the average parity price of wheat, computed from available statistics of the Department of Agriculture for the 12-month period beginning on July 1 of the year with respect to which the payment is made, and the amount which would be received for that number of bushels of wheat at the average farm price of wheat, similarly computed for the same period.

The contract signer's pro rata share of the administrative expenses of the Association shall be paid to the Association in such installments and at such times as the Secretary may determine and the balance of the total adjustment payment for each year after deduction of the amount paid to the Association shall be paid in the manner hereinafter provided.

b. Time of Payments:

(1) The first installment of the adjustment payment for each of the contract years shall be made as soon as practicable after proof, satisfactory to the Secretary, of compliance by the contract signer/s with all the terms and conditions of this contract for that year.

(2) The second installment of the adjustment payment for each of the contract years shall be made as soon as practicable after proof, satisfactory to the Secretary, of compliance by the contract signer/s with all the terms and conditions of this contract for the next succeeding contract year, provided that the second installment of the adjustment payment for the contract year 1939 or for any previous contract year at the end of which this contract is suspended or terminated by the Secretary pursuant to the provisions of section 2 of this contract, shall be made as soon as practicable after proof, satisfactory to the Secretary, of compliance by the contract signer/s with all the terms and conditions of this contract for that contract year.

c. Persons to Whom Payments will be Made.—All payments under this contract are for the benefit of the contract signer/s and shall be made only to the contract signer/s, except as provided in this section.

(1) *Death, Disappearance, or Incompetency.*—In case any contract signer (*a*) dies, or (*b*) disappears and fails to make claim for his share of any payment to be made hereunder within 6 months after such payment has been administratively approved, or (*c*) is declared incompetent by a court of competent jurisdiction, payments which at the time of any such contingency such contract signer would have been entitled to receive by reason of performance by him of all the terms and conditions of this contract prerequisite to such payments shall, upon proof of such performance, be made to the beneficiary, if any, named in Part VII by such contract signer.

(2) *Attachment, Garnishment, or Other Legal Process.*—In case any attempt is made, by means of garnishment, attachment, execution, or any other legal process or proceeding, to reach or divert to any person other than the contract signer any payment to be made hereunder, the Secretary may terminate this contract as to such contract signer or may suspend all payments which such contract signer would otherwise be entitled to receive hereunder until such time as such contract signer can receive payment free from any such legal process or proceeding.

(3) *Bankruptcy.*—In the event that any party to this contract is involved in bankruptcy or insolvency proceedings, the Secretary may terminate this contract as to such party.

In the event of termination under this subsection *c* as to any contract signer no payment shall be made under this contract of any amount which such contract signer would otherwise be entitled to receive hereunder, but such contract signer shall not, by reason of such termination, be liable to return to the Secretary any payments already made to him unless there has been noncompliance with any of the terms and conditions of this contract.

When the Secretary has determined the existence or nonexistence of a circumstance in the event of which payment is to be made to a contract signer or a beneficiary and has made payment in accordance with such determination, the obligation of the Secretary with respect to the payment so made shall be discharged thereby and neither the contract signer, nor the beneficiary, nor any other person shall have any right against the Secretary or the United States with respect thereto based upon or derived from this contract.

PART IV.—FURTHER AGREEMENTS AND CONDITIONS

SECTION 13. *Covenants.*—All the undertakings, agreements, and obligations of the contract signer are covenants which shall run with the land and shall bind all future transferees, purchasers, lessees, tenants, and encumbrancers of this farm or any part thereof, whether such transfer, purchase, lease, tenancy, or encumbrance has resulted by voluntary act or by operation of law. The contract signer shall notify all transferees, purchasers, lessees, tenants, or encumbrancers of this farm, or any part thereof, of the existence and terms of this contract and shall promptly notify the Wheat Section through the County Allotment Committee in writing of any change in the legal relationship of any contract signer to this farm, giving full details thereof.

SECTION 14. *Noncompliance and Termination.*—Without limitation of any right or remedy of the Secretary conferred by law or this contract, if the Secretary determines (and his determination shall be final and bind all parties hereto) that there has been a material misstatement in any of the statements made by any contract signer in or in connection with this contract, or that there has been any noncompliance by any contract signer with any term or condition of this contract or with any applicable Ruling, or that any contract signer is not, in any of the contract years, a bona fide wheat producer in the manner and upon the terms and conditions indicated in Part VII thereof or in a form submitted to indicate a change in legal relation to this farm (each and all of such contingencies being herein referred to as "noncompliance"), the contract signer shall have the following obligations and the Secretary shall have any one or more of the following remedies:

a. Contract Signer's Obligation to Refund Payments.—Upon demand in writing by the Secretary or his authorized agent, the contract signer shall repay to the Secretary an amount equal to the sum of all payments made hereunder to the contract signer or to another for the contract signer's use or benefit (including the contract signer's proportional share of the expenses of the Association) or such portion of such payments as the Secretary may require, together with interest on the amount of all payments required by the Secretary to be repaid, at the rate of 6 percent per annum from the date of the making of each such payment by the Secretary, and the expense of collection of any such amounts; *provided, however,* that the contract signer shall not be obligated to repay to the Secretary any payments made for any contract year or years prior to that next preceding the contract year in which such noncompliance occurred. This obligation of the contract signer shall exist and continue until fully discharged irrespective of the termination of this contract as provided hereinbelow.

b. Secretary's Rights and Remedies.—The Secretary shall have (1) a lien on all wheat growing or grown on this farm at or after the date of any noncompliance to secure payment of any sums becoming due to the Secretary hereunder; (2) the right to terminate this contract as to any one or more of the parties hereto; such termination shall not, however, affect the obligations of the contract signer under subsection *a* of this section; (3) without terminating this contract as to any party hereto, the right to require any or all persons who have received any payments hereunder to refund to him an amount equal to all or any portion of such payments subject to the exception stated in subsection *a* of this section or to deduct such amount from any payments subsequently becoming due hereunder and to suspend all further payments under this contract until all such deductions and/or refunds have been made; (4) the right to require the contract signer to make disposition, in such manner as the Secretary shall direct, of any wheat produced on this farm in any contract year upon any acreage in excess of that permitted to be planted on this farm under this contract in such year.

STATE .....

COUNTY .....

(Stamp State and county code and contract serial numbers above)

.....
(Name and address of operator (typewritten))

.....
(Name and address of landlord (typewritten))

PART V.—DESCRIPTION OF FARM

Each of the undersigned represents that he is, or during 1936 will be, engaged in the production of wheat upon the farm known as the.....
Farm, consisting of.....acres, situated.....from.....
(Miles and direction) (Town)
on.....Road, in.....Township, of.....
County, State of.....,

—or—

described as the.....of Section....., Township (Block).....,
Range (Certificate).....,.....from....., in
(Miles and direction) (Town)
.....County, State of....., in the capacity and upon the terms stated in Part VII of this contract.

PART VI.—FARM HISTORY, FARM ALLOTMENT, AND BASES

The contract signer represents that the figures set forth below in lines (*a*), (*b*), (*c*), and (*d*) are correct and agrees that the base wheat acreage for this farm for each of the contract years shall be the acreage stated in lines (*e*), (*f*), (*g*), and (*h*), respectively, and that all such figures have been determined in conformity with all Rulings and official instructions.

(*a*) Total acreage in farm..... (*e*) Base wheat acreage 1936.....

(*b*) Total crop acreage..... (*f*) Base wheat acreage 1937.....

(*c*) Average annual wheat acreage ..... (*g*) Base wheat acreage 1938.....

(*d*) Farm allotment in bushels..... (*h*) Base wheat acreage 1939.....

PART VII.—SIGNATURES, RELATION TO FARM, DESIGNATION OF BENEFICIARY, AND STIPULATION FOR DIVISION OF ADJUSTMENT PAYMENTS

Each of the undersigned has represented in connection with his signature his relation to this farm in 1936 and the share of the wheat crop to which he is entitled for 1936, the share (determined pursuant to Rulings) of the adjustment payments to which he is entitled under this contract, and has designated the person to receive payments pursuant to provisions of section 12*c* of this contract if any of the contingencies listed therein occur, and in witness of all the representations and agreements contained in this contract has executed this contract on the date indicated opposite his signature.

Operator

....
(Relation to farm)[1] (Share of wheat crop) (Share of adjustment payment)[2]

.....
(Name and address of beneficiary named by operator pursuant to section 12*c* (typewritten))

Signed in the presence of—

.... [SEAL]
(Signature of witness) (Signature of operator)

....., 193....
(Date)

Landlord

....
(Relation to farm)[1] (Share of wheat crop) (Share of adjustment payment)[2]

.....
(Name and address of beneficiary named by landlord pursuant to section 12*c* (typewritten))

Signed in the presence of—

.... [SEAL]
(Signature of witness) (Signature of landlord)

....., 193....
(Date)

CERTIFICATION OF THE COUNTY ALLOTMENT COMMITTEE

WE HEREBY CERTIFY that the figures in the foregoing Wheat Adjustment Contract have been determined in accordance with all Rulings and official instructions and that to the best of our information and belief the representations made therein and in connection therewith are correct and we recommend that the Secretary accept such contract.

.....

....., 193.... .....
(Date)

.....
County Allotment Committee.

[1]Indicate whether owner, cash tenant, fixed commodity rent tenant, share tenant, or tenant on combined share and cash or fixed commodity-rent basis.

[2]This share, if different from share of wheat crop, has been determined in accordance with the provisions of Ruling No. 128 (Wheat-206).